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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-53723-2022 (O&M)

Date of Decision: 31.07.2023

Rajender

....Petitioner(s)

Versus

State of Haryana and another

.....Respondent(s)

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Mr. Ajit Lamba, Advocate, for the petitioner.

Mr. Naveen Kumar Sheoran, DAG, Haryana.

Mr. Nitin Sansanwal, Advocate, for respondent No.2.

JASGURPREET SINGH PURI, J. (Oral)

1. The present petition has been filed under Section 482 of the Code of Criminal Procedure for setting aside the order dated 22.09.2022 (Annexure P-1) passed by learned Additional Sessions Judge, Hisar whereby the application filed by the petitioner/accused under Section 311 Cr.P.C (Annexure P-6) seeking recalling of PW1 Jitender (complainant) for further cross examination has been dismissed.

2. It has been submitted by the learned counsel for the petitioner that the petitioner had moved an application under Section 311 Cr.P.C for recalling of complainant who deposed as PW1 and he is the complainant in the present case being the brother of the deceased and the petitioner is the husband of the deceased. He submitted that in the complaint which was filed by respondent No.2, he had so stated that he reached the place of occurrence where his sister

had died at 6.00 P.M on 26.01.2019 and he reiterated the same at the time of deposition before the Court while deposing as PW1. He submitted that thereafter the petitioner could lay hands upon the Google Timeline from where it is clear that the complainant had in fact reached at 7.53 P.M. and not 6.00 P.M. and Google Timeline could be seen from the mobile number of respondent No.2 which has been admitted in his examination earlier. He submitted that although the application was moved by the petitioner at a later stage under Section 311 Cr.P.C for recalling of respondent No.2/complainant as PW1 but since it goes into the root of the matter whereby the statement given by the complainant at that time was totally contrary to the record which is now available with the petitioner and therefore, even at the belated stage the learned trial Court ought not to have dismissed the application and in order to ascertain the true factual position ought to have allowed the application for recalling of respondent No.2/complainant.

3. On the other hand, Mr. Nitin Sansanwal, learned counsel appearing on behalf of respondent No.2 has submitted that the petitioner had filed an application for recalling of respondent No.2 to prove the Google Timeline and record and the Google map of the mobile phone of respondent No.2 which is not an authenticated piece of evidence. He submitted that one gmail account of one mobile number can also be used in more than one mobile numbers and therefore, such kind of document cannot be relied upon at all and even there can be change of user of the mobile number as well. He submitted that the application filed by the petitioner is totally frivolous and in order to delay the trial and therefore, no further opportunity may be granted.

4. I have heard the learned counsel for the parties.

5. The petitioner who is the accused had filed an application under Section 311 Cr.P.C for recalling of PW1 who is the complainant /respondent No.2. The petitioner is the husband of the deceased lady and respondent No.2/complainant is the brother of the deceased. The petitioner wishes to recall respondent No.2 and to cross examine only on limited issue with regard to his time of reaching based upon one Google Timeline. This Court is of the view that although it is at the belated stage because as per the learned counsel for the parties now the case is fixed for final arguments but it is a settled law that for the purpose of invoking Section 311 Cr.P.C, the Court has to see as to whether it affects the subject matter of the case by going into the root of the controversy or not. In the present case it cannot be said that recalling of respondent No.2 to prove the Google Timeline and record and the Google map of the mobile phone of respondent No.2 does not go into the root of the controversy. The petitioner wants to cross-examine the complainant/respondent No.2 only for a limited issue pertaining to the presence of the complainant at a particular time and a particular place. This Court is of the view that in the present facts and circumstances, the learned trial Court ought to have allowed the application under Section 311 Cr.P.C. Even otherwise also during the course of arguments the learned counsel for the petitioner has stated that only one opportunity may be granted in this regard.

6. In view of the above, this Court is of the considered view that the present petition deserves to succeed. Consequently, the present petition is allowed and the order dated 22.09.2022 (Annexure P-1) passed by the

learned Additional Sessions Judge, Hisar is hereby set aside. The learned trial Court shall allow the recalling of the witness PW1 who is respondent No.2 and grant only one opportunity in this regard.

31.07.2023

(JASGURPREET SINGH PURI)
JUDGE

rakesh

Whether speaking	:	Yes/No
Whether reportable	:	Yes/No