

CRM-M No.48104 of 2019 (O&M)

2023:PHHC:155393

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

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CRM-M No.48104 of 2019 (O&M)

Date of Decision: 05.12.2023

Balwinder Kaur**.....Petitioner****Vs****State of Punjab and others****....Respondents****CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA**

Present: Mr. Prateek Pandit, Advocate
for the petitioner.

Mr. Gurlal Singh Dhillon, Asstt. A.G., Punjab.

Mr. A.S. Khinda, Advocate
for respondent Nos.3 to 5.

HARKESH MANUJA, J. (Oral)

[1]. By way of present petition under Section 482 Cr.P.C, prayer has been made for quashing of order dated 30.10.2019 (Annexure P-1) passed by the Sub-Divisional Judicial Magistrate, Sultanpur Lodhi, Kapurthala, whereby an application filed at the instance of petitioner, invoking Section 311 Cr.P.C. for recalling of PW-4 Suresh Kumar so as to re-examine in order to prove the statement of Mehar Singh Ex. Sarpanch has been dismissed.

[2]. Briefly stating, in the present case the issue revolves around the alleged fraud played upon by the accused party qua the execution of Will dated 26.01.2007 of deceased Hazara Singh. In the aforesaid context, FIR No.155 dated 21.09.2010 under Sections 420, 465, 467, 468, 471, 120-B IPC came to be registered at Police Station Sultanpur Lodhi, District Kapurthala, at the instance of

petitioner. During investigation, Mehar Singh Ex. Sarpanch appeared and supported the execution of Will by deceased Hazara Singh, while claiming himself to be one of its attesting witness. However, later on when, as per FSL report, the signatures of testator Hazara Singh were found to be forged over the Will in question, Mehar Singh Ex. Sarpanch, while appearing before the Inquiry Officer namely PW-4 Suresh Kumar changed his stance and stated that he never attested any Will executed by deceased Hazara Singh and the document got executed by deceased as per him was some agreement. In the inquiry report though finding three others to be involved in committing fraud, Mehar Singh Ex. Sarpanch was exonerated.

[3]. During prosecution evidence, the Inquiry Officer Suresh Kumar, who appeared as PW-4, proved the Inquiry Report Ex.PW4/A. Petitioner being the complainant appeared as PW-1, who intended to prove the statement made by Mehar Singh Ex. Sarpanch, before the Inquiry Officer Suresh Kumar as Ex.PD, however, its admissibility was objected to by the defence counsel while stating that the same could only be proved and exhibited either in the statement of Inquiry Officer or Mehar Singh Ex. Sarpanch himself and not by the petitioner/complainant.

[4]. Consequently, while prosecution evidence was going on, an application came to be filed under Section 311 Cr.P.C. at the instance of petitioner/complainant, seeking permission to recall PW-4 Suresh Kumar in order to prove the statement made by Mehar Singh Ex. Sarpanch during the inquiry proceedings. The said application was vehemently opposed at the instance of private respondent Nos.2 to 5 and finally the prayer made in the said application was rejected by the Trial Court vide impugned order dated 30.10.2019.

[5]. Impugning the aforesaid order dated 30.10.2019 passed by the Trial Court, learned counsel for the petitioner submits that the proof of statement made by Mehar Singh Ex. Sarpanch before the Inquiry Officer PW-4 Suresh Kumar was very much essential so as to put forth the case set up by the prosecution as regards the forgery and fabrication about the execution of Will in question besides even establishing the role of Mehar Singh Ex. Sarpanch as well as other accused and thus, the application under Section 311 Cr.P.C. filed at the instance of petitioner was required to be allowed.

[6]. On the other hand, learned counsel for private respondent No.3 to 5 submits that the said statement of Mehar Singh Ex. Sarpanch already formed part of record as Ex.PD and thus, filing of application under Section 311 Cr.P.C. at the instance of petitioner was merely a futile exercise so as to delay the trial and to cause prejudice to the rights of the private respondents.

[7]. I have heard learned counsel for the parties and gone through the paper book as well as the records of this petition. I find substance in the submissions made by learned counsel for the petitioner.

[8]. In the present case, though the statement of Mehar Singh Ex. Sarpanch formed part of record as Ex.PD, however, a specific objection as regards its mode of proof was raised by the defence counsel while stating that the said statement could not be proved on record by petitioner/complainant, the same having been recorded before the Inquiry Officer PW-4 Suresh Kumar, who could only prove the same.

In the wake of aforesaid objection having been raised by the defence counsel, consideration of said statement Ex.PD at the final stage could always be

questioned by the defence counsel, the same having been objected to by him. In view of the fact that Mehar Singh Ex. Sarpanch initially made a statement, supporting execution of the Will, however, later the signatures of testator-Hazara Singh been found to be forged as per the FSL report, he changed his stance while appearing before the Inquiry Officer PW-4 Suresh Kumar having stating that his signatures were obtained on some agreement, rather than the Will in question, his statement Ex.PD, therefore, becomes essential to be proved so as to establish the involvement of Mehar Singh Ex. Sarpanch besides that of his other accomplices/co-accused as well.

[9]. Considering the relevance of statement Ex.PD, the Trial Court failed to exercise the jurisdiction vested in it, under Section 311 Cr.P.C. Resultantly, the impugned order dated 30.10.2019 passed by the Sub-Divisional Judicial Magistrate, Sultanpur Lodhi is set aside. This petition is allowed and PW-4 Suresh Kumar is ordered to be re-examined *qua* the aspect of mode of proof of statement of Mehar Singh Ex.Sapanch (Ex.PD), made before him in the inquiry proceedings.

[10]. Pending application(s), if any, shall stand disposed of.

December 05, 2023	(HARKESH MANUJA)
<i>Atik</i>	JUDGE
Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No