

2024:PHHC:030474

**In the High Court for the States of Punjab and Haryana
At Chandigarh**

CRM-M-4801-2024 (O&M)
Date of Decision:-4.3.2024

Brijesh Kapoor and another

... Petitioners

Versus

Chanan Ram

... Respondent

CORAM: HON'BLE MR. JUSTICE GURVINDER SINGH GILL

Present:- Mr. Himmat Singh Deol, Advocate with
Ms. Trnum Preet Kaur, Advocate for the petitioners.

Mr. Amandeep Agnihotri, Advocate for the respondent.

GURVINDER SINGH GILL, J. (Oral)

1. The petitioners assail order dated 24.01.2024 (Annexure P-12) passed by learned Judicial Magistrate 1st Class, Rajpura vide which the evidence of the petitioners has been closed by order.
2. The controversy in the present case hinges around the authenticity of agreement to sell dated 19.11.2004, as per which the respondent/complainant had agreed to sell land to the accused (petitioners).
3. The complainant instituted a complaint in the year 2014 alleging therein that the aforesaid agreement in question is a forged document. Pursuant to recording of preliminary evidence, the petitioners/accused were summoned and the trial proceeded, wherein after conclusion of complainant's evidence and also of recording statements under Section 313 Cr.P.C. of the accused, the complainant moved an application under Section 311 Cr.P.C. seeking

permission to examine three more CWs namely Baghel Singh, Stamp Vendor, Jagjeet Singh Stamp Vendor and Davinder Singh, Junior Assistant, HRC, DC Office Mohali. The said application was duly accepted by the Trial Court vide order dated 13.12.2023 (Annexure P-4) and pursuant thereto the aforesaid three CWs were duly examined. After examination of the aforesaid three additional CWs, the Trial Court recorded additional statement under Section 313 Cr.P.C. of the accused on 22.1.2024. After the said additional statement under Section 313 Cr.P.C. had been recorded, the Trial Court adjourned the matter for two days and posted the same for 24.1.2024 for recording defence evidence.

4. Summons had been issued for the purpose of securing the presence of DW – Navdeep Gupta, Handwriting Expert, which were duly served upon him on the said date as would be evident from a copy summon/service report (Annexure P-11). The Handwriting Expert Navdeep Gupta had made a request on the reverse side of the summons for fixing some other date as he had to appear in the Courts at Nabha and Malerkotla on 24.1.2024. The said request is reproduced hereinunder:

“Sir, on 24/1/24, I have to appear in Courts at Nabha and Malerkotla, so I am not able to attend this Hon’ble Court on 24/1/24. Kindly allow 31/1/24 for the same.

Yours Truly
Sd/-
Navdeep Singh, Handwriting Expert
23/1/24”

5. When the matter was taken up by the Trial Court on 24.1.2024, the Trial Court, however, closed the defence evidence while observing that the case is a 10 years old case and is a “time bound” matter.

6. Learned counsel for the petitioners submitted that after three CWs, who had been summoned with the aid of Section 311 Cr.P.C. by the prosecution/complainant had been duly examined, the Trial Court recorded additional statement under Section 313 Cr.P.C. and had posted the matter for recording defence evidence, but it was just two days, which were afforded to the petitioners to get their defence evidence recorded. Learned counsel has submitted that since the petitioners intended to examine DW - Navdeep Gupta, Handwriting Expert, who visits various districts on different days of the week and who had expressed his inability to appear on 24.1.2024 and had expressed that he would be available on 31.1.2024, the Trial Court ought to have adjourned the matter rather than closing the defence evidence merely by affording two days to the petitioners. Learned counsel for the petitioners submitted that the aforesaid report of Handwriting Expert has been duly relied upon by the Civil Court, wherein the Civil Suit filed by the petitioners has been decided in their favour.
7. Opposing the petition, learned counsel for the respondent/complainant vehemently argued that it is a case where the Handwriting Writing Expert had examined the document in question way back in the year 2011 and the said report was duly available with the petitioners all the time, when prosecution evidence was being recorded or even when their defence evidence was recorded in the first instance, but the petitioners never ever referred to the said document and have now chosen to fall back on the said document, simply in order to delay the conclusion of trial. It has further been submitted that said 3 CWs, which have been examined by the complainant with the aid of Section 311 Cr.P.C. after the complainant's evidence had

earlier been closed, do not pertain to handwriting and, as such, the report of the Handwriting Writing Expert is absolutely irrelevant and would not serve any purpose. It has been submitted that while one of the CW is a stamp vendor, the other CW is the son of the stamp vendor and the 3rd CW is Record Keeper of Head Registry Clerk in the Office of Deputy Commissioner, Mohali.

8. Learned counsel for the respondent further submitted that the petitioners cannot be allowed to resort to dilatory tactics particularly when ample opportunities had already been afforded to them to build up their defence and the petitioners had intentionally chosen never to refer to the report of the Handwriting Expert. Learned counsel for the complainant presses into service a judgment passed by this Court in Rajiv Mehra Versus State of Punjab and another, 2012(16) R.C.R. (Criminal) 837 and also a judgment passed by Hon'ble Jharkhand High Court in Md Sayeed Versus State of Jharkhand, R.C.R.(Criminal) 825 to contend that once sufficient opportunities had been afforded to the accused to lead his entire evidence but they had failed to do so, then they are not entitled to further opportunities.
9. This Court has considered the aforesaid submissions.
10. It goes without saying that once the evidence of the prosecution/complainant is concluded and his statement under Section 313 Cr.P.C. has been recorded, then upon summoning of some additional evidence in the shape of PWs and recording their statements, it is the duty of the Court to put such additional evidence to the accused to enable him to explain the same. The Trial Court has rightly recorded the additional statement under Section 313 Cr.P.C. of

the accused. It also goes without saying that after some additional evidence has been led by the prosecution and additional statement under Section 313 Cr.P.C. has been recorded, the accused would be entitled to lead evidence in his defence provided there is just cause for leading such defence evidence. Needless to mention, the accused would be required to establish the relevance of any such evidence sought to be led or witness to be examined.

11. In the present case, the entire controversy pertains to the authenticity of the agreement dated 19.11.2004. No doubt when the complainant had initially examined some witnesses, the report of the Handwriting Writing Expert was already available with the accused, but the accused did not choose to examine the said Handwriting Expert. However, when three additional CWs were recorded subsequently, they stated as regards a material aspect i.e. as to who had purchased the stamp paper on which the disputed agreement had been allegedly executed. A perusal of the statement of stamp vendor would indicate that the stamp paper in question had been purchased by one Bodh Raj. In other words by a 3rd party. Such like evidence could certainly affect the case of the accused adversely as regards the authenticity of the agreement in question is concerned. Under these circumstances, it can safely be said that now upon examination of three additional CWs, the accused feel more threatened and have thus chosen to examine the Handwriting Expert, who had already furnished his report much earlier and which had also been placed on record before the Civil Court.
12. Under these circumstances, the contention of the petitioners that the petitioners can not be allowed to examine handwriting expert as the additional evidence in the shape of statements of CWs Baghel Singh, Jagjeet

Singh and Davinder Singh does not pertain to handwriting, cannot be accepted. The petitioners ought to be afforded an opportunity to examine the Handwriting Expert to enable them to built up their defence and to contradict evidence led by complainant.

13. As far as the judgments cited by learned counsel for the respondent/complainant are concerned, a perusal of the same would show that in the said cases several opportunities had been afforded to the accused therein and it was thereafter that the evidence had been closed. However, in the present case only one single opportunity of two days had been afforded to the accused after recording of additional statement under Section 313 Cr.P.C. to enable the petitioners to lead defence evidence and on the very said date the evidence was closed by order.
14. In view of the discussion made above, the impugned order cannot sustain and is hereby set aside. The petitioners/accused are permitted to examine DW – Navdeep Gupta, Handwriting Expert. The Trial Court, while fixing a date for recording the statement of said Navdeep Gupta, Handwriting Expert shall duly take into account the date convenient to the witness, subject to the condition that such date is not a very long date. Being a “time bound” matter, the witness concerned would also be expected to make it convenient to appear before the Court within shortest possible time.
15. The instant petition stands disposed off accordingly.

4.3.2024

pankaj

(**Gurvinder Singh Gill**)
Judge

Whether reasoned/speaking

Yes / No

Whether reportable

Yes / No