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IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CRM-M-9776-2024
CRM-M-13420-2024
Date of decision:22.04.2024

1.

CRM-M-9776-2024

VIJAY KUMAR

....Petitioner
- Versus
- STATE OF PUNJAB

....Respondent
2.

CRM-M-13420-2024

VIJAY KUMAR

....Petitioner
- Versus
- STATE OF PUNJAB

....Respondent

CORAM:- HON'BLE MR. JUSTICE SANJIV BERRY

Present:- Mr. Ramesh Chand Sharma, Advocate for the petitioner.

Mr. Ankit Grewal, DAG, Punjab.

Mr. Kulbhushan Raheja, Advocate for the complainant.

SANJIV BERRY, J. (ORAL)

1. Both the petitions have been taken up together for disposal, arising out of the same FIR.
2. By way of the present petitions, petitioner has challenged in CRM-M-9776-2024 order dated 18.01.2024 (Annexure P-4) passed by

learned Judicial Magistrate First Class, Abohar, District Fazilka allowing the application under Section 311 Cr.P.C whereby directions were issued to Mali Ram to produce the original documents and in CRM-M-13420-2024 petitioner has challenged impugned order dated 22.02.2024 (Annexure P-6) passed by learned Judicial Magistrate First Class, Abohar, District Fazilka vide which the nephew of deceased Mali Ram has been permitted to appear as witness.

3. So far as the factual position of the case is concerned the same is not disputed to the extent that FIR in question was registered against 9 accused on the complaint of Mali Ram alleging that the accused had hatched a criminal conspiracy in forging the will dated 16.08.2007 allegedly executed by Amar Lal son of Nidhan Ram who happens to be the brother of the complainant and further alleging that the accused also used the said Will to grab the property left by the deceased.

4. Upon being issued notice of motion the learned State counsel has put in appearance and filed reply by way of affidavit of Deputy Superintendent of Police Sub-Division Abohar, District Fazilka in CRM-M-9776-2024.

5. It is *inter alia* contended by learned counsel for the petitioner that the learned trial Court made error in allowing the application under Section 311 Cr.P.C. moved by the prosecution vide impugned order (Annexure P-4) thereby summoning Mali Ram as witness to produce the original documents besides summoning the handwriting expert for his further examination qua the said documents. He submits that in the reply

filed by the petitioner, it was specifically pointed out that said Mali Ram had already expired but despite that the learned trial Court ignoring this aspect allowed the summoning of Mali Ram as witness. He further submits that even on the subsequent date the learned trial Court while passing order dated 22.02.2024 (Annexure P-6) cited one Charanjit nephew of deceased Mali Ram as a witness, although there was no such application ever moved by the prosecution, as such, he prayed for acceptance of the petitions and setting aside of the impugned orders dated 18.01.2024 (Annexure P-4) and 22.02.2024 (Annexure P-6).

6. Per contra learned State counsel assisted by learned counsel for the complainant have assailed these arguments by submitting that it had come in evidence of Anil Kumar Gupta, (Handwriting Expert) during his deposition in trial that he had handed over the original report and photochart to the complainant and his examination was deferred. Thereafter, the prosecution had moved application (Annexure P-2) seeking production of original record and also to get it proved from the Handwriting Expert. It is contended that the learned Court rightly allowed application under Section 311 Cr.P.C, however due to inadvertence wrongly mentioned regarding summoning of Mali Ram as witness. They, however contend that in the order dated 22.02.2024 (Annexure P-6) Charnjeet nephew of the deceased had simply produced the record i.e original report and the photochart and has wrongly been mentioned by the learned trial Court as witness. They submit that there are minor irregularities in the impugned orders but that the

same does not tantamount to any illegality and as such prayed for dismissal of the petitions.

7. Arguments heard.

8. After considering the respective submissions and perusing the record, coming to the order dated 18.01.2024 (Annexure P-4) passed by the learned trial Court, whereby application under Section 311 Cr.P.C was allowed, it is observed that the perusal of the impugned order would reveal that there is no illegality or infirmity in the order so as to call for any interference by this Court, however the learned trial Court erred in summoning PW Mali Ram who had since expired. Although this by itself, does not tantamount to any illegality but mere irregularity and for the sake of getting the record straight, the impugned order allowing the application under Section 311 Cr.P.C is modified to the extent that it be treated to have been allowed only to the extent of the the production of original documents i.e. “the original report dated 25.11.2015 of Handwriting Expert and photochart,” and for summoning of Handwriting expert Anil Kumar Gupta for his further examination qua the said documents. With these modifications the CRM-M-9776-2024 stands disposed of.

9. Coming to the impugned order dated 22.02.2024 (Annexure P-6) the perusal of record would reveal that the learned trial Court has mentioned one Charanjeet nephew of Mali Ram to be witness in the case. Admittedly, said Charajeet nowhere figured in the list of witness attached with the challan nor is their any application moved by the prosecution for summoning him as a witness in the case. The mentioning of this person as a

witness by learned trial Court would not be appropriate, and mentioning him as legal representative of deceased Mali Ram is not in consonance with the provisions of law in the absence of any specific application to that effect having been made by the prosecution, therefore, it is deemed appropriate and in the interest of justice that this part of the order wherein the learned trial Court has mentioned Charanjeet nephew of deceased Mali Ram as witness and also considering him as LR of the deceased Mali Ram is deleted from the impugned order because he cannot be treated as witness until and unless there is some specific application moved in this regard by the prosecution, with opportunity to the accused to file reply thereto and only thereafter the learned Court could have summoned the person not being cited as witness in the list of witnesses annexed with the challan as additional witness.

10. As a consequent the petition CRM-M-13420-2024 is disposed of with the modification in the impugned order dated 22.02.2024 (Annexure P-6) to the effect that the words “witness Charanjeet nephew of deceased Mali Ram” and further “LR of deceased Mali Ram” stand deleted there from.

11. Both these petitions are disposed of accordingly.

12. Any observation made above shall not be construed as opinion of this Court on the merits of the case.

13. Photocopy of this order be placed on the file of connected case.

22.04.2024

Gyan i) Whether speaking/reasoned?
ii) Whether reportable?

(SANJIV BERRY)
JUDGE

Yes/No
Yes/No