

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

201-2

CRM-M-14993-2019 (O&M)
Date of decision: 22.02.2024

Gurdeep Singh

...Petitioner

Vs.

Jaspal Singh and others

...Respondent

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. G.S. Punia, Senior Advocate,
with Mr. P.S. Punia, Advocate,
for the petitioner.

Mr. Damanjit Singh Sandhu, Advocate,
for the respondents.

Sandeep Moudgil, J. (oral)

The jurisdiction of this Court has been invoked under Section 482 Cr.P.C., for quashing of the impugned order dated 16.01.2019 (Annexure P-1) passed by the Judicial Magistrate Ist Class, Ludhiana, vide which application under Section 311 Cr.P.C. filed by the complainant-petitioner for leading additional evidence, has been dismissed.

Learned senior counsel for the petitioner submits that application under Section 311 Cr.P.C. was preferred on 07.12.2018, at the stage of pre-charge evidence, but the same has been dismissed vide order dated 16.01.2019 (Annexure P-1).

The said application was contested by the respondent-accused by taking preliminary objections to the effect that the same is not maintainable, which has been filed only with a view to delay the proceedings in the present matter.

The Trial Court, after having examined the provisions of

Section 311 Cr.P.C., observed that it does not confer a right of any party to examine, cross-examine and re-examine the witness and that this power is given to the Court not to be merely exercised at the bidding of any one of the party.

In support of the averments made in the petition, learned counsel for the petitioner argues that the complainant wishes to produce the order dated 23.12.2014 passed by the District Judge, Ludhiana; certified copy of the plaint and judgment and decree dated 01.09.2018 in civil suit No.15 of 22.01.2013 along with plaint and judgment and decree dated 01.09.2018 in civil suit No.16 of 22.01.2013 and also certified copy of cross-examination of Jaspal Singh, which was conducted on 05.09.2013 before the Court of Civil Judge (Junior Division), Ludhiana. The trial Court has allowed production of these documents, however, disallowed the prayer of the petitioner regarding examination of witnesses i.e. Dr. Sudha Vasudeva, the then Medical Officer (MD, Psychiatrist), Civil Hospital, Samrala along with record regarding eye-cue report of Gurjeet Singh; Sukhwinder Singh (Lambardar), marginal witness of WILL dated 03.10.2003 executed by Sikandar Singh; further record pertaining to revenue appeal No.21 dated 09.03.2004 (decided on 04.01.2008) by the Collector, Ludhiana and record pertaining to DDR No.8 dated 03.12.2006 registered at PP Marado, Ludhiana.

This Court is sanguine of the fact that the said application has been dismissed despite the fact that the complaint was pending for pre-charge evidence, as is evident from the zimni orders produced before this Court vide Annexure P-4 (Colly.).

Learned counsel for the respondents, at the same time, argues

that names of these witnesses were not mentioned in the list of witnesses and the documents and therefore, the said application has been filed with a motive to delay the proceedings, wherein several opportunities have already been granted to the petitioner for leading the pre-charge evidence and the order rejecting the same by the trial Court is legal and justified.

Having heard the contentions raised by learned counsel for the respective parties, this Court deems it appropriate to have a glance at Section 244 Cr.P.C., which reads as under:-

“244. Evidence for prosecution. - (1) When, in any warrant case instituted otherwise than on a police report, the accused appears or is brought before a Magistrate, the Magistrate shall proceed to hear the prosecution and take all such evidence as may be produced in support of the prosecution.

(2) The Magistrate may, on the application of the prosecution, issue a summons to any of its witnesses directing him to attend or to produce any document or other thing.”

But, the prayer made in the application under Section 311 Cr.P.C. has been declined in a mechanical manner without recording any justifiable reason to show, as to how any prejudice would be caused to the respondents, wherein admittedly, the case was listed at the stage of pre-charge evidence.

Hence, in the light of above discussions made hereinabove, the impugned order dated 16.01.2019 (Annexure P-1) is quashed and two effective opportunities are granted to the petitioner to conclude his pre-charge evidence. It is made clear that no further chance would be provided for the said cause. As far as the prejudice, if any, to the respondents is

concerned, the petitioner shall compensate the respondents by paying Rs.5000/- as costs.

Accordingly, the present petition is allowed.

(SANDEEP MOUDGIL)
JUDGE

22.02.2024
Ajay Prasher

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