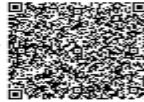


2024:PHHC:163464



IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CRR-801-2024

DECIDED ON: 23.10.2024

DAVINDER KAUR

.....PETITIONER

VERSUS

SATNAM SINGH AND OTHERS

.....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL.

Present: Mr. Ravi Malhotra, Advocate
for the petitioner.

None for respondent No.1.

Mr. Arun Sharma, Advocate
for respondent No.2.

None for respondent No.3.

SANDEEP MOUDGIL. J.**1. Relief Sought:-**

The present criminal revision petition has been preferred against the impugned order 03.01.2024 passed by Judicial Magistrate Ist Class, Jalandhar vide which an application filed by the petitioner-complainant under Section 311 Cr.P.C. for summoning Sukhpreet Kaur, Handwriting and Finger Print Expert by way of additional evidence has been declined.

2. Facts:-

The factual matrix of the present case is that the petitioner-Davinder Kaur, married Kulwinder Singh in 1984 against the wishes of her family, leading to her estrangement from her parents and siblings. Following her father's death in 1997, the estate was divided among his legal heirs,

including Davinder Kaur. The petitioner alleges that her family members conspired to forge a general power of attorney (GPA) dated July 20, 1987, purportedly executed by her in favor of her mother-Nirmanjan Kaur. This forged document was used to facilitate the sale of property without the consent of the petitioner and she became aware of the alleged fraud on April 16, 2012. After filing a complaint with the Senior Superintendent of Police (SSP), an inquiry was conducted where the accused admitted guilt. A compromise was reached in March 2014, which later fell through when the accused did not honor the agreement. Hence, the present complaint.

3. **Submissions:-**

On behalf of petitioner:-

Learned counsel for the petitioner has argued that the petitioner had questioned CW3 Sukhjinder Singh, a handwriting expert who had provided a report in civil proceedings and a copy of that report was presented as evidence by the complainant. However, the handwriting expert had used a specimen from the Photostat documents in the civil proceedings, so the petitioner filed an application before the trial court to examine the handwriting expert in order to establish the fact clearly.

On behalf of the petitioner, it is further argued that the trial court erred in rejecting the petitioner's application, noting that the handwriting expert had previously been questioned in civil proceedings and that the petitioner had previously presented the same evidence in criminal proceedings, negating the need for a second examination. The trial court also overlooked the well-established legal principle that the burden of proof in criminal trials is beyond a reasonable doubt, whereas in civil proceedings it is the preponderance of the evidence. The one with the burden of proof would fail if neither side presented any evidence at all.

On behalf of respondent No.2:-

It has been argued on behalf of respondent No.2 that the petitioner plans to call a handwriting and finger print expert of her choosing as a court witness, which is not allowed since it amounts to producing evidence. The petitioner is not permitted to bring up the same issue again because the general power of attorney was already decided in the civil proceedings between the parties.

4. Analysis:-

Heard learned counsel for the parties at length.

The following principles will have to be borne in mind while dealing with an application under Section 311 Criminal Criminal Procedure Code read along with read along with Section Section 138 of the of the Evidence Act.”

(i) Whether the Court is right in thinking that the new evidence is needed by it? Whether the evidence sought to be led in under Section 311 is noted by the Court for a just decision of a case?

(ii) The exercise of the widest discretionary power under Section 311 Criminal Procedure Code should ensure that the judgment should not be rendered on inchoate, inconclusive speculative presentation of facts, as thereby the ends of justice would be defeated.

(iii) If evidence of any witness appears to the Court to be essential to the just decision of the case, it is the power of the Court to summon and examine or recall and re-examine any such person.

(iv) The exercise of power under Section 311 Criminal Procedure Code should be resorted to only with the object of finding out the truth or obtaining proper proof for such facts, which will lead to a just and correct decision of the case.

(v) The exercise of the said power cannot be dubbed as filling in a lacuna in a prosecution case, unless the facts and circumstances of the case make it apparent that the exercise of power by the Court would result in causing serious prejudice to the accused, resulting in miscarriage of justice.

(vi) *The wide discretionary power should be exercised judiciously and not arbitrarily.*

(vii) *The Court must satisfy itself that it was in every respect essential to examine such a witness or to recall him for further examination in order to arrive at a just decision of the case.*

(viii) *The object of Section 311 Criminal Procedure Code simultaneously imposes a duty on the Court to determine the truth and to render a just decision.*

(ix) *The Court arrives at the conclusion that additional evidence is necessary, not because it would be impossible to pronounce the judgment without it, but because there would be a failure of justice without such evidence being considered.*

(x) *Exigency of the situation, fair play and good sense should be the safe guard, while exercising the discretion. The Court should bear in mind that no party in a trial can be foreclosed from correcting errors and that if proper evidence was not adduced or a relevant material was not brought on record due to any inadvertence, the Court should be magnanimous in permitting such mistakes to be rectified.*

(xi) *The Court should be conscious of the position that after all the trial is basically for the prisoners and the Court should afford an opportunity to them in the fairest manner possible. In that parity of reasoning, it would be safe to err in favour of the accused getting an opportunity rather than protecting the prosecution against possible prejudice at the cost of the accused. The Court should bear in mind that improper or capricious exercise of such a discretionary power, may lead to undesirable results.*

(xii) *The additional evidence must not be received as a disguise or to change the nature of the case against any of the party.*

(xiii) *The power must be exercised keeping in mind that the evidence that is likely to be tendered, would be germane to the issue involved and also ensure that an opportunity of rebuttal is given to the other party.*

(xiv) *The power under Section 311 Criminal Procedure Code must therefore, be invoked by the Court only in order to meet the ends of justice for strong and valid reasons and the same must be exercised with care, caution and circumspection. The Court should bear in mind that fair trial entails the interest of the accused, the victim and the society and, therefore, the grant of fair and proper opportunities to the persons concerned, must be ensured being a constitutional goal, as well as a human right.”*

It is a well settled law that an application under Section 311 Cr.P.C. must not be allowed only to fill lacuna in the case of prosecution, or the defence or to disadvantage of the accused or to cause serious prejudice to the defence of the accused or to give an unfair advantage to the opposite party. Additional evidence must not be received as a disguise for retrial or to change the nature of the case against the parties.

In case of *V.N. Patil vs. K. Niranjana Kumar and Ors., (2021) 3 SCC 661*, the aim of every court is to discover the truth. Section 311 Cr.P.C. is one of many such provisions which strengthen the arms of a court in its effort to unearth the truth by procedure sanctioned by law. At the same time, the discretionary power vested under section 311 Cr.P.C. has to be exercised judiciously for strong and valid reasons and with caution and circumspection to meet the ends of justice.

In the case at hand, the petitioner seeks to re-examine Sukhpreet Kaur, a handwriting and fingerprint expert, despite having previously examined him during both preliminary and pre-charge evidence stages. The report of the expert (Ex.CW-3/1) and photographic charts (Ex.CW-3/2 to CW-3/4) were already presented in court, establishing that the signatures on the general power of attorney dated 29.07.1987 were compared by this expert, which is sufficient for this Court to infer that petitioner-complainant has filed an application under Section 311 Cr.P.C., as an attempt to unnecessarily prolong the trial, given that the handwriting expert has already provided his testimony. Further more, Section 311 Cr.P.C. allows courts to summon or re-examine witnesses at any stage of a trial if their evidence is deemed essential for a just decision. However, this power is discretionary and should be exercised judiciously, primarily aimed at preventing a failure of

justice due to procedural oversights or ambiguities in witness statements. The Apex Court has emphasized in its various judicial pronouncements that this section is not intended for arbitrary use but must align with the principles of criminal law and be justified by the needs of justice.

In this instance, the court concludes that since Sukhpreet Kaur has already provided his expert opinion on the matter, there is no substantial justification for his re-examination. The application appears to serve more as a tactic to delay proceedings rather than to clarify any ambiguity or introduce new evidence essential for resolving the case.

5. Conclusion:-

The court's stance indicates a commitment to expediting the trial process and minimizing unnecessary applications. The invocation of Section 311 Cr.P.C. must be grounded in necessity for justice; hence, repetitive examination of already presented evidence without new grounds is viewed as inappropriate in this context.

In view of the discussions made hereinabove, this Court is of the view that the impugned order dated 03.01.2024 is a well reasoned and a speaking order which needs no interference of this court. Accordingly, the same is upheld .

Hence, the present petition is dismissed being devoid of any merits.

23.10.2024

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**(SANDEEP MOUDGIL)
JUDGE**

Whether speaking/reasoned: Yes/No
Whether Reportable: Yes/No