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IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

CRM-M No.30761-2021
Date of Decision:-21.05.2024

GURBAJ SINGH

... Petitioner

Versus

STATE OF HARYANA

... Respondent

CORAM:- HON'BLE MR. JUSTICE SANJIV BERRY

Present:- Mr. Vivek Aggarwal, Advocate, for the petitioner.

Mr. Ramender Singh Chauhan-AAG, Haryana.

Mr. Chanakya Pandit, Advocate for the complainant.

SANJIV BERRY, J (ORAL)

1. Instant petition has been filed under Section 482 Cr. P.C. for quashing of the impugned order dated 09.06.2021 (Annexure P-2), passed by learned Additional Sessions Judge, Karnal, dismissing the Criminal Revision of the petitioner qua summoning of defence witness, as well as impugned order dated 11.02.2021 passed by the learned Judicial Magistrate First Class, Assandh (Annexure P-1) whereby the application under Section 311 Cr.P.C for summoning of witness was dismissed in case FIR No. 28 dated 14.01.2017 under Section 285, 341 IPC and Section 25 of Arms Act, registered at Police Station Assandh, District Karnal.
2. Brief facts of the case are that complaint Sukhbir Singh filed application alleging that dera of the accused is adjacent to his dera and they



are not on visiting terms. On 13.01.2017, at about 7:00 pm, they were celebrating “lohri” in his dera, Gurbaj Singh obstructed the way of his dera by parking his car on the way and when they asked him to remove his car he started using filthy language and brought his licenced revolver from his house and fired shots towards the complainant family with an intention to kill them. One shot hit complainant’s mother Dalbir Kaur in her abdomen and she was taken to the Government Hospital, Assandh. FIR was lodged and during investigation petitioner was arrested and recovery of two bullets, revolver and swift car were effected from the petitioner. On completion of the investigation challan was presented in court. During the course of trial the petitioner had moved an application under Section 311 Cr.P.C for summoning Joginder Singh, DSP as defence witness, which was dismissed vide the impugned order dated 11.02.2021 (Annexure P-1) and aggrieved by the same, petitioner filed Criminal Revision Petition No. 13 of 2021 and he same was also dismissed by learned Additional Sessions Judge, Karnal vide order dated 09.06.2021 (Annexure P-2) and hence aggrieved petitioner preferred the present petition.

3. It is *inter alia* contended by learned counsel for the petitioner that the learned trial Court wrongly dismissed the application under Section 311 Cr.P.C for summoning Joginder Singh, DSP in defence, vide order dated 11.02.2021. He contends that examination of Joginder Singh DSP as a defence witness is required to prove the cancellation report of FIR No.28 dated 14.01.2017 under Section 285, 341, of IPC and 25 of Arms Act, Police Station Assandh as the investigation has been conducted earlier by him and



the petitioner was found innocent and FIR was cancelled by the DSP Joginder Singh, as such his statement is necessary for just decision of the case. The learned trial Court has dismissed the application under Section 311 Cr.P.C. and revision of the same was also dismissed vide order dated 09.06.2021 (Annexure P-2) both the orders are based on surmises and conjectures and suffers patent illegality, as such he prays for setting aside the orders passed by the Courts below.

4. Learned counsel for the State assisted by learned counsel for the complainant contended that the learned trial Court as well as learned Additional Sessions Judge has rightly dismissed the application preferred by the petitioner being devoid of any merit. They contended that the instant application was preferred by the petitioner with sole motive of delaying the proceedings. They contended that the said cancellation report intended to be proved by summoning DSP Joginder Singh vide the instant application, has no relevance at this stage as the cancellation report so preferred alongwith application under Section 243 Cr.P.C has not been accepted by the Court at the relevant time. The police had preferred the challan after thorough investigation in the matter and the said report therefore has no relevance. As such they prayed for dismissal of the petition.

5. Considering the respective submissions and perusing the record, it transpires that admittedly in the present FIR, after the petitioner had been arrested in the case, on the basis of his disclosure statement, his .30 bore licensed weapon was also taken into police possession and after completion of investigation challan was presented on 05.03.2017. Thereafter the police



had preferred report under Section 173 (8) dated 06.11.2017.

6. It is evident that the learned Magistrate had kept this application for discharge of the petitioner pending vide order dated 20.08.2019, considering the fact that this report qua discharge/cancellation had been filed after the trial has commenced in this case and even the charge had been framed under Section 285, 341 IPC read with Section 27 of Arms Act on 12.05.2017, therefore the trial Court proceeded to record the evidence of the prosecution witness with observation that adjudication qua the question regarding altercation under Section 307 IPC would be considered after the examination of the prosecution witness.

7. It is pertinent to mention here that the petitioner had moved an application for summoning of Joginder Singh, then SHO PS Assandh as defence witness for proving same report under Section 173(8) on 19.09.2018 and the same had been declined by the learned trial Court vide order dated 27.07.2021 observing that under Section 173(8) forms part of record and it was not proved on record by the prosecution as it was result of further investigation carried out by the police after submission of the final report under Section 173(8) Cr.P.C. Admittedly no such permission for carrying out further investigation under Section 173(8) Cr.P.C was taken by the police after the submission of the final report under Section 173 Cr.P.C, way back on 19.09.2018. It transpires that the petitioner has preferred the present application for summoning of another official namely Joginder Singh DSP to prove the same report under Section 173(8) Cr.P.C which had already been declined by the Court vide order dated 27.07.2021.



8. Keeping the above facts and circumstances into consideration, it emerges that the police after arrest of the petitioner and effecting recovery of weapon of offence from him had filed the final report under Section 173 Cr.P.C in the Court on 19.09.2018, thereafter charge was framed and the prosecution evidence was called. There is nothing on record that the police had taken any permission of the Court before carrying out further investigation under Section 173(8) Cr.P.C. which is already a part of record.

9. It is worth mention that the petitioner had earlier attempted to summon the then SHO PS Assandh Jitender Singh as defence witness for proving this report under Section 173(8) Cr.P.C (Annexure P-3) by moving application dated 19.09.2018 which was declined by the learned Magistrate vide order dated 27.07.2021, by holding that the said report under Section 173(8) Cr.P.C. already forms part of record and the same has been filed after the submission of final report under Section 173 Cr.P.C. by the police and there is no necessity of formally proving the said report dated 19.09.2018. The said application was accordingly dismissed by the Court considering the same have been moved as an attempt on the part of the petitioner to delay the proceedings.

10. Thereafter, the instant application for summoning of DSP Joginder Singh for the same purpose of proving the same report under Section 173(8) Cr.P.C, has been filed again by the petitioner which has now been declined vide the impugned order dated 11.02.2021 (Annexure P-1).

11. These circumstances shows that the petitioner intends to summon the aforesaid witness in defence evidence for the purpose of



production of report Annexure P-3 which is already part of record. The Challan in the case had been presented wayback in 2017 and even the charges were framed. After completion of prosecution evidence the petitioner had been moving the application dated 19.09.2018. for the purpose of proving the report under Section 173(8) Cr.P.C earlier by mentioning SHO PS Assandh to be called and when the same has been dismissed, then by moving another application for summoning of DSP Joginder Singh for that purpose, which has also been dismissed vide the impugned order.

12. The learned counsel for the petitioner had referred to the judgment cited as *Paramjit Kaur vs. State of Haryana, Law Finder Doc ID# 2413921* to submit that denial of just available evidence to the petitioner would tantamount to denial of free and fair trial. However, perusing the same it transpires that the facts and circumstances therein are not identical to the facts and circumstances of the present case as in that case the application had been moved under Section 311 Cr.P.C for production of documents for preserving the call details and location details of the phone numbers, whereas in the present case the documents i.e report under Section 173(8) Cr.P.C has already been a part of the judicial record. Moreover, it is not out of place to mention here that it is evident from the impugned order that the petitioner had not described the purpose for which said DSP Joginder Singh is required to be summoned as defence witness. It is simply mentioned that the DSP Joginder Singh be summoned along with cancellation report, whereas the cancellation report is already on record. It is specifically mentioned by learned Court while dismissing the earlier application for the

same purpose moved by the petitioner on 19.09.2018 that this report under Section 173(8) Cr.P.C already forms part of record and there is no necessity of formally proving the same. The petitioner has intentionally not disclosed this aspect in this petition and has tried to conceal this material aspect. It is apt to mention here that any application moved under Section 243(2) Cr.P.C by the accused during course of defence evidence for compelling evidence of any witness or production of documents, the Magistrate can refuse the same on the ground that it has been made for the purpose of vexation or delay or for defeating the ends of justice by passing the detailed order. In the present case the learned Magistrate has passed the impugned speaking order in accordance with law and the same does not suffer from any infirmity or illegality so as to call for any interference by this Court.

13. As a consequent, finding no merit in the instant petition, the same is hereby dismissed.

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

(SANJIV BERRY)
JUDGE

21.05.2024
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| i) | Whether speaking/reasoned? | Yes/No |
| ii) | Whether reportable? | Yes/No |