

CRM-M-29405-2023

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IN THE HIGH COURT OF PUNJAB AND HARYANA AT  
CHANDIGARH

CRM-M-29405-2023  
Date of decision:20.05.2024

MANISH

... PETITIONER

V/s

STATE OF HARYANA

... RESPONDENT

**CORAM: HON'BLE MR. JUSTICE SUMEET GOEL**

Present: Mr. Jyoti Parshad Sharma, Advocate for the petitioner.

Ms. Mahima Yashpal, DAG, Haryana.

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**SUMEET GOEL, J.**

1. Challenge in the present criminal miscellaneous petition under Section 482 of the Cr.P.C., is laid to the order dated 25.11.2022 passed by learned Judicial Magistrate Ist Class, Karnal and order dated 18.04.2023 passed by the learned Sessions Judge, Karnal, whereby an application filed by the petitioner under Section 311 of Cr.P.C. stands dismissed.

2. The present petition has been filed by the petitioner apparently in the most cursory, casual and apathetic manner. In as much as the application filed by the petitioner under Section 311 of the Cr.P.C., which is the genesis of the dispute in the present case is not made part of the record of the case. No other pleadings forming

part of the lis before the learned Trial Court or the learned Sessions Court have been made part of the record of the present criminal petition. Needless to say that in the absence of all these pleadings, which are the bare minimum requirements to evaluate the cause of grievance of the petitioner, present petition is an onerous task left for this Court to be adjudicated.

3. However, after evaluating the entire relevant material available on record of the case, just in the shape of the impugned orders passed by the learned Judicial Magistrate as well as the learned Sessions Judge. Facts germane to the adjudication of the present petition are that an FIR seems to have been registered against the petitioner bearing No.175, dated 23.02.2018 under Sections 341, 354-D, 506 IPC, at Police Station City, Karnal. In the said case after the complainant was Examined-in-Chief as well as her cross-examination was conducted, the petitioner filed an application under Section 311 of the Cr.P.C. seeking recall of the complainant as a witness in the case. The said recall was sought on the grounds that the earlier counsel engaged by the petitioner had not put several documents to the complainant in her cross- examination. It was further averred that the previous counsel engaged by the petitioner did not even ask any question on conversation, photographs and compromise. As such, it was averred that the recall of the complainant as witness is imperative for just adjudication of the case.

4. The learned Trial Court vide order dated 25.11.2022 dismissed the said application under Section 311 of the Cr.P.C. filed by the petitioner. However, perusal of the order dated 25.11.2022 passed by the learned Magistrate makes it clear that before parting with the case in said order, yet another fresh application under Section 311 of the Cr.P.C. was filed before the learned Magistrate with a pendrive.

5. Against the order dated 25.11.2022 passed by the learned Magistrate, the petitioner filed a criminal revision petition bearing CRR No.1 of 2023 in the Court of learned Sessions Judge, Karnal. On 25.01.2023, when the said criminal revision was fixed for arguments before learned Sessions Judge, the same was dismissed as withdrawn on statement made on behalf of petitioner that due to a technical defect he wants to file the same before the High Court.

6. Thereafter, the petitioner filed a criminal revision petition No.559 of 2023 before this Court. The said criminal revision petition was also withdrawn by the petitioner to again move to the Court of learned Sessions Judge. The said criminal revision was dismissed as withdrawn vide order dated 01.03.2023 passed by this court.

7. Then again the petitioner approached the Court of the learned Sessions Judge, by filing criminal revision No.027 of 2023, against the order dated 25.11.2022 passed by the learned Magistrate.

8. The said criminal revision was dismissed by the learned Sessions Judge, Karnal, vide order dated 18.04.2023, on merits as well as on the issue of maintainability, which is the subject matter of challenge in the present criminal miscellaneous petition filed under Section 482 of the Cr.P.C.

9. I have heard the learned counsel for the parties and have gone through the record of the case carefully. It is argued on behalf of the petitioner that his previous counsel, who conducted cross-examination of the complainant, failed to put some questions as well as some documents to the complainant. However, thorough perusal of the averments made in the present petition under Section 482 of the Cr.P.C. makes it abundantly clear that no such question or document, requires to be put to the complainant, has been spelled out by the petitioner. A vague, bald and cursory averment made on behalf of the petitioner in this regard cannot serve any purpose of the petitioner. The petitioner ought to have brought the details of said questions and documents, which he requires to be put to the complainant, by recalling her as witness in the case. The relevance, admissibility and reliability of any such question of document was supposed to have been spelt out by the petitioner, so as to enable this Court to evaluate the requirement of recall of complainant as witness.

10. The lackadaisical approach of the petitioner towards the proceedings in the case, clearly spells out his indifferent attitude towards the Court proceedings. The veracity of the claim of the petitioner in the absence of details thereof cannot be gone into and it

can, in the facts of the case, be safely presumed that the act of the petitioner is aimed at causing harassment to the complainant with oblique motive. His act and conduct has the tendency to pollute the stream of justice. Fact mentioned in the order dated 25.11.2022 passed by the learned Magistrate, which is imperative for the adjudication of the present case, and cannot be lost sight of is, that immediately upon dismissal of his first application under Section 311 Cr.P.C, which is the basis of present petition, he moved yet another application under Section 311 of Cr.P.C. before the learned Trial Court. The petitioner by his acts is interested to keep the judicial proceedings in the FIR pending in one way or the other without letting the same attain finality. The act and manner of presentation, withdrawal and representation of judicial proceedings by the petitioner in a whimsical manner, clearly hints towards his indulgence in legal adventurism. It is trite law that the frivolous pleadings, on part of one party, cannot be permitted to be a cause of oppression of the other party in legal proceedings. It cannot be overlooked that more than 6 years have passed since the registration of the FIR in this case, and the trial is still pending due to the petitioner's dilatory tactics.

11. It is not the case of the petitioner that his earlier counsel who cross-examined the complainant was not competent to do so. It is not the case of the petitioner that the said previous counsel of the petitioner did not abide by the instructions of the petitioner in the case. It is not explained by the petitioner that what is the new

evidence he wishes to lead through the cross-examination of witness and how it is germane to the adjudication of point for determination in trial. The benevolent provision of Section 311 of the Cr.P.C. cannot be permitted to be a means of oppressing and harassing of the complainant.

12. The Hon'ble Supreme Court in case of ***AG vs Shiv Kumar Yadav, 2015 AIR*** (Supreme Court), 3501 has held as under:

*“15. The above observations cannot be read as laying down any inflexible rule to routinely permit a recall on the ground that cross-examination was not proper for reasons attributable to a counsel. While advancement of justice remains the prime object of law, it cannot be understood that recall can be allowed for the asking or reasons related to mere convenience. It has normally to be presumed that the counsel conducting a case is competent particularly when a counsel is appointed by choice of a litigant. Taken to its logical end, the principle that a retrial must follow on every change of a counsel, can have serious consequences on conduct of trials and the criminal justice system. Witnesses cannot be expected to face the hardship of appearing in court repeatedly, particularly in sensitive cases such as the present one. It can result in undue hardship for victims, especially so, of heinous crimes, if they are required to repeatedly appear in Court to face cross-examination.”*

13. In view of the foregoing findings there is no legal infirmity in the order dated 25.11.2022 passed by the learned Trial Court dismissing the application filed by the petitioner under Section 311 of Cr.P.C. seeking recall of the complainant for examination. Resultantly, the present criminal miscellaneous petition filed by the petitioner is dismissed being devoid of merit.

(SUMEET GOEL)  
JUDGE

May 20, 2024  
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| Whether speaking/reasoned: | Yes/No |
| Whether reportable:        | Yes/No |