



CRM-M-32641-2024

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

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CRM-M-32641-2024
Decided on: 05.08.2024

Surjit Singh

...Petitioner

Versus

Rattan Singh and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. Vivek K. Thakur, Advocate
For the petitioner.

ANOOP CHITKARA, J.

1. Aggrieved by the dismissal of the application filed by the petitioner(complainant) under Section 311 CrPC to summon the witnesses, who were not initially named in the list of witnesses, the petitioner has come up before this Court by filing the present petition under Section 482 CrPC.

2. I have heard counsel for the petitioner to ascertain whether there is any illegality in the impugned order or the case is worth issuing notice or not and its analysis would lead to the following outcome.

3. Petitioner's counsel did not dispute that in the complaint filed by him, Bhupinder Singh and Architect Ashish Bhalla were not named as witnesses. Later on during the trial, the petitioner filed an application under Section 311 CrPC to summon two witnesses i.e. Bhupinder Singh and Architect Ashish Bhalla. Petitioner's counsel has referred to the stand taken by him in the application filed under Section 311 CrPC, i.e. in the list of witnesses name of Gurmail Singh is at Sr. No.5, but inadvertently name of Bhupinder Singh could not be mentioned in the list of witnesses although he had seen the entire occurrence. He further submits that statement of Architect Ashish Bhalla is required to prove the site plan as he visited the spot, prepare site plan and take photographs.

4. Perusal of the application which has been annexed as Annexure P-2, does not mention reasons that why were they not initially examined. The only factor was inadvertence qua non-mentioning of name of Bhupinder Singh and no reason has been mentioned for non-mentioning of name of Ashish Bhalla as witness. Vide impugned order dated 23.05.2024, learned Judicial Magistrate Ist Class-II, dismissed the application by passing a detailed and well reasoned order. It would be appropriate to reproduce paras 4 & 5 of the said order, which reads as follows:-



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“4. The case of the complainant is that all the co-sharer are in exclusive possession as per oral partition and aar to supply of water to the fields is also joint. That accused Rattan Singh and Sant Singh forcibly took the land adjoining to their house owned by complainant and cut the passage from 16 ft to 18 ft and deprived the complainant from the said passage. That water channel/aar situated on the backside of the house of the complainant was also demolished by accused. In his preliminary evidence complainant examined himself as CW1 wherein he has specifically mentioned about the presence of Gurmail Singh at the time of occurrence when Balbir uncle of the complainant asked Rattan Singh to eat his spit. In the entire complaint and in evidence of CW1 Surjit Singh the presence of Bhupinder Singh is not mentioned. In the absence of the same the evidence of Bhupinder Singh is not necessary for just decision of the case.

5. As far as summoning Ashish Bhalla architect is concerned, neither any photograph nor any site plan is placed on record to warrant the summoning of said witness. Therefore, no ground is made out to summon the said witness. Hence, present application is dismissed. Case is adjourned to 02.07.2024 for remaining evidence of complainant.”

5. Petitioner’s counsel has referred to the judgments passed by the Hon’ble Supreme Court of India i.e. ***Jamuna Rani vs. S. Krishna Kumar*** and the judgments passed by the Hon’ble Bombay High Court in ***Criminal Revision Application No.42 of 2002 in Mrs. Veena Asawani @ Veena vs. Shri Ashok and another ; Criminal Writ Petition No.1706 of 2019 in Balu vs. State of Maharashtra.***

6. In the above said judgments, it was held that witnesses can be re-examined. The legal question is that why the complainant did not mention their names in the list of witnesses, which is un-explained in the application under Section 311 CrPC and there is no explanation why he could not have mentioned their names in the list of witnesses, as such there is no illegality in the impugned order.

7. Given above, this case is not worth issuing notice and consequently, the petition is dismissed. Pending applications, if any, stand disposed of.

(ANOOP CHITKARA)
JUDGE

05.08.2024
anju rani

Whether speaking/reasoned: Yes
Whether reportable: No.