



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

(202)

CRR No. 1386 of 2024 (O&M)
Date of Decision : 13.09.2024

Harjot Singh

...Petitioner

Versus

State of Punjab and others

...Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Ashdeep Singh, Advocate for the petitioner.
Mr. T.P.S. Chawla, Senior Deputy Advocate General, Punjab.
Mr. S.S. Swaich, Advocate with
Mr. Sahibjeet S. Sandhu, Advocate and
Ms. Deepa Negi, Advocate for respondent No. 2.
Mr. Naresh Kaushal, Advocate with
Mr. Nitish Kaushal, Advocate for respondent No. 3.
Mr. Inder Preet Singh, Advocate for respondents No. 4 and 5.
Mr. Harwinderjit Singh Sandhu, Advocate for
Mr. Yashpal Thakur, Advocate for respondent No. 6.

Harsimran Singh Sethi J. (Oral)

1. In the present criminal revision petition, the order under challenge is dated 03.07.2024 by which the application filed by the petitioner to be summoned as an eye witness as well as to place on record the video clipping proving the incident for which the FIR No. 37 dated 30.03.2021, under Sections 302, 307, 506, 148, 149, 120-B IPC and Sections 25/27/54/59



of Arms Act, Police Station Mullanpur Garibdass, District SAS Nagar, Mohali was registered has been rejected.

2. Learned counsel for the petitioner submits that only reason given for not accepting the plea of the petitioner by the trial court in the impugned order is that neither the police nor any witness, who has been examined, has so far supported the claim of the petitioner that he was an eye witness, hence, the said application cannot be accepted whereas, PW3, namely, Harwinder Singh, in his statement has clearly stated that the petitioner was present at spot and had recorded the incident on his mobile phone, which testimony has been ignored and not dealt with by the trial court. Therefore, reason given for not accepting the plea of the petitioner to be called as an eye witness is factually incorrect.

3. Learned counsel appearing on behalf of the respondents submits that various objections were raised to the application submitted by the petitioner to be called as an eye witness and to produce a video clipping stated to have been recorded by the petitioner but, trial Court chose to give a particular reason for not accepting the claim. Learned counsel for the respondents submits that the application filed by the petitioner to be called as an eye witness could not have been entertained after an expiry of four years, especially when the petitioner never raised any such plea at any given point of time either before the police or before the competent Court of law, hence, the said reasons are good enough to decline the plea of the petitioner to be called as an eye witness.

4. Learned counsel for the respondents have not been able to rebut a particular fact that as per the statement of PW3, namely, Harwinder Singh,



it has been stated that the petitioner was present at the site of the incident and has recorded the particular video clip of the incident, which relates to the FIR No. 37 dated 30.03.2021 (Annexure P-1).

5. I have heard learned counsel for the parties and have gone through the record with their able assistance.

6. From the pleadings which have come on record, for rejecting the application of the petitioner to be called as an eye witness and to produce the video clip of the incident recorded by the petitioner, only reason given by the trial Court is that the petitioner never filed the application either before the Investigating Officer or any Higher Police Official regarding the investigation being conducted in a particular manner and not including him in the investigation despite being an eye witness of the incident. It has been further mentioned in the impugned order of the trial Court that none of the witness who have been examined, have supported the claim of the petitioner that he was present at the site. The said reason given by the trial court in the impugned order that none of the witness has supported the claim of the petitioner being eye witness is belied from the statement of PW3-Harwinder Singh, wherein, the said witness has clearly stated that the petitioner Harjot Singh was very much present at site on the relevant date and has captured the incident on his mobile phone. Learned counsel for the State as well as the counsel for the accused have not been able to rebut the said fact. Hence, the findings recorded by the trial Court in paragraph 6 is factually incorrect.

7. At this stage, learned counsel for the respondents/accused submits that the said testimony of PW3 cannot be taken into account as the said prosecution witness has only been partly examined and the said



statement is an improvement. The arguments being raised by learned counsel for the accused cannot be accepted by this Court as the same is not the reason given by the trial court in the impugned order. Argument raised on behalf of the accused counsel be incorporated in the order of the trial Court so as to dismiss the revision petition.

8. Once, the trial Court has not taken the said reason to reject the prayer of the petitioner, the same cannot be accepted as this Court is only to limit the consideration qua validity of the impugned order passed by the trial court on the basis of the facts mentioned therein.

9. Further, while passing the impugned order, the trial Court has totally ignored the provisions of Section 311 Cr.P.C. The relevant Section 311 Cr.P.C. is as under :-

“311. Power to summon material witness, or examine person present.

- Any Court may, at any stage of any inquiry, trial or other proceeding under this Code, summon any person in attendance, though not summoned as a witness, or recall and re-examine any person already examined; and the Court shall summon and examine or recall and re-examine any such person if his evidence appears to it to be essential to the just decision of the case.”

10. A bare perusal of the above reproduction would show that the Court has ample power to summon any witness in order to arrive at a conclusion so as to do justice qua the allegations alleged in the FIR in question. In the impugned order, no finding has been recorded by the trial Court that keeping in view the facts mentioned in the application coupled with the evidence on record and the assertion of the petitioner that he has



recorded the incident on his mobile, the trial Court should have examined the prayer of the petitioner to be summoned as an eye witness and to produce the video clipping alleged to have been recorded at the site of the incident by examining the same keeping in view the power of the trial Court under Section 311 of the Cr.P.C. In the absence of any such finding given by the trial Court that neither in the opinion of Court, petitioner is to be called as an eye witness or not, the impugned order passed so as to decline the application of the petitioner cannot be sustained.

11. The impugned order dated 03.07.2024 is accordingly set-aside. The case is remanded back to the trial Court to pass appropriate order on the plea of the petitioner with regard to summoning him as eye witness and for production of the video clip allegedly stated to have been recorded by the petitioner during the incident.

12. Keeping in view the fact that the accused are behind bars and they are also seeking grant of bail and keeping in view the fact that the claim of the petitioner being an eye witness will be material to decide the bail applications, the trial Court is directed to pass appropriate fresh order by taking into consideration all pleas raised by the petitioner and all the objections raised by the accused by passing a speaking order for accepting or rejecting the plea of the petitioner or the accused within a period of four weeks from the next date of hearing.

13. Criminal revision petition is disposed of in above terms.

September 13, 2024
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(HARSIMRAN SINGH SETHI)
JUDGE

Whether speaking/reasoned : Yes

Whether reportable : No