



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

241

CRM-M-6390-2019
Date of decision: 01.12.2025

DALJIT SINGH

.....Petitioner

VERSUS

STATE OF PUNJAB AND OTHERS

.....Respondents

CORAM : HON'BLE MR. JUSTICE VINOD S. BHARDWAJ

Present: - Mr. G.S. Sirphikhi, Advocate
for the petitioner.

Mr. Rituraj Singh, DAG, Punjab.

Mr. Nitin Kant Setia, Advocate
for respondent No.2.

Mr. Vipin Mahajan, Senior Advocate with
Mr. Utkrant Mahajan, Advocate
for respondents No.3 and 4.

VINOD S. BHARDWAJ, J. (Oral)

Challenge in the present petition is to the order dated 05.01.2019 passed by the Sub Divisional Judicial Magistrate, Batala in case bearing No. CHI-1396-2014 in FIR No. 195 dated 09.09.2012 registered under Sections 420/120-B of the Indian Penal Code at Police City Batala, Police District Batala whereby the application moved by the petitioner-complainant under Section 311 Cr.P.C. for summoning of witnesses had been declined.

2. Learned counsel appearing on behalf of the petitioner-complainant, Daljit Singh, contends that the aforesaid FIR was registered on his statement to the effect that on or about 01.11.2010, the petitioner was approached by Puran Singh, Rachhpal Singh, and Avtar Singh. These individuals represented to the petitioner that Puran Singh intended to sell 28 kanals of his land situated in Village Punder, Tehsil Batala, for a consideration of ₹57,70,000/- per acre. It is submitted that the petitioner was induced by the aforesaid Rachhpal Singh and Avtar Singh to jointly purchase the said land with them as they were not in a capacity to purchase the land from their funds, and to enter into an agreement to sell. The sale deed was agreed to be executed on or before 01.07.2012. Out of the total advance amount of ₹20 lakhs each, agreed to be paid, the petitioner initially paid a sum of ₹10 lakhs as earnest money. Approximately one month after the payment of the initial ₹10 lakhs, the petitioner paid another tranche of ₹10 lakhs towards his share to be paid to Puran Singh as advance consideration. An agreement to sell dated 01.11.2010 was thus executed in favour of the complainant and Rachhpal Singh. By 20.01.2011, the petitioner had his share of ₹20 lakhs out of a total sum of ₹40 lakhs required to be paid to Puran Singh and the remaining amount was to be paid by Rachhpal Singh. It is further contended that, thereafter, certain portions of the land were sold to third parties and Puran Singh executed sale deeds directly in favour of third parties, in accordance with the terms of the agreement. However, in June 2012, the complainant learnt that accused Puran Singh had executed a clandestine sale deed in favour of Rachhpal Singh and Harbhajan Singh in December 2011 i.e. nearly eight months prior

to the agreed date for execution of the sale deed, thereby transferring the land, including the complainant's share, without any intimation to him. It is alleged that this was done fraudulently, dishonestly, and in furtherance of a criminal conspiracy to deprive the complainant of his rightful share after having induced him to part with a sum of ₹20,00,000/-. The complainant also submitted that the accused persons misappropriated the amount paid by him, utilised the same for their personal benefit, and intentionally obstructed execution of the sale deed in his favour. In view of these circumstances, the FIR in question came to be registered.

3. Upon completion of investigation, a final report under Section 173 of the Code of Criminal Procedure was submitted before the Court of the Sub-Divisional Judicial Magistrate, Batala, on 27.11.2013. Thereafter, charges were framed on 10.12.2013 for the offences punishable under Sections 420 and 120-B of the Indian Penal Code against the respondents-accused. Two prosecution witnesses, namely ASI Manohar Lal and Balwinder Singh, were examined in the course of trial. Subsequently, the petitioner moved an application under Section 311 Cr.P.C. seeking summoning of additional witnesses. It was averred that the criminal proceedings had arisen from the accused persons' failure to honour the terms of the agreement to sell dated 01.11.2010, as well as their failure to acknowledge and give effect to the receipts executed in relation to the payments made by the petitioner.

4. Counsel further contends that the original documents viz. the agreement to sell and the receipt executed by the accused-Puran Singh had been filed alongwith the Civil Suit titled "*Daljit Singh versus Puran Singh*"

which is pending before the Court of Additional Civil Judge (Senior Division), Batala. It was asserted that these original documents were required to be summoned for the purpose of leading of evidence and proving his case. It was also pointed out that accused Rachhpal Singh had paid earnest money to accused Puran Singh through a cheque amounting to ₹8 lakhs, a fact specifically mentioned in the FIR, and that the record pertaining to this payment was sought to be produced in support of the allegations set forth in the complaint. However, vide order dated 05.01.2019, the Sub-Divisional Judicial Magistrate, Batala, dismissed the petitioner's application under Section 311 Cr.P.C., holding that the petitioner was attempting to introduce an entirely new case under the guise of leading additional evidence through the summoning of the aforesaid documents and witnesses.

5. Counsel contends that the Sub Divisional Judicial Magistrate, Batala erred in dismissing the application for summoning of the witnesses. He submits that, in respect of Witnesses No. 1 and 2 i.e. officials from the Oriental Bank of Commerce and the Record Clerk of Bank of Baroda, their testimony is confined solely to proving the factum of payment made through cheque No. 011343, issued by accused Rachhpal Singh towards the sale consideration in the sum of ₹8 lakhs, a fact expressly mentioned in the FIR itself. With regard to Witness No. 3, counsel submits that his examination is necessary because the original agreement to sell dated 01.11.2010, the receipt dated 20.01.2011, and the affidavit dated 02.07.2012 are all part of the judicial record in the civil suit titled Daljit Singh v. Puran Singh, pending before the Additional Civil Judge (Senior Division), Batala. The summoning of this witness is therefore essential to produce the original documents

forming the foundational basis of the allegations. As regards Witness No. 4, counsel submits that his testimony is required to establish the fact that Puran Singh had executed sale deeds in favour of different persons at the instance of the complainant and accused Rachhpal Singh, an assertion also made by the petitioner in the FIR. Witnesses No. 5 and 6, according to the counsel, are necessary to prove that pursuant to the agreement in question, accused Rachhpal Singh also executed certain documents, and that their statements had already been recorded by the police during the course of investigation. He thus contends that all the said witnesses directly relate to the allegations duly mentioned in the FIR itself, and that their testimony would be essential to establish the complete chain of the evidence.

6. Learned counsel for the respondent-State, as well as the learned Senior Counsel appearing for the complainant, submit that the application filed by the petitioner was rightly dismissed by the Trial Court upon finding that the proposed witnesses were not essential for adjudication of the real controversy. It is contended that the application was rejected primarily on the ground that it had not been moved by the Assistant Public Prosecutor, but instead by the petitioner himself. They further submit that the stage for leading such evidence would arise only after the accused persons dispute the occurrence of the transaction in the manner as alleged in the FIR. Since no such denial has yet been made and the proceedings have not reached that stage, the application was premature. It is additionally pointed out that the civil suit instituted by the petitioner, on the same cause of action already stands dismissed, and therefore, the present application appears to be an attempt to protract the criminal trial. However, they fairly conceded that in

any event, no prejudice would be caused to the prosecution or the complainant if the said witnesses were examined.

7. It is evident from perusal of the impugned order that the application filed by the petitioner has been dismissed on the ground that the same has not been forwarded by the Assistant Public Prosecutor for the State and that the documents and witnesses, which the petitioner intended to bring on record, were not relevant for the proper adjudication of the present case. The operative part of the order reads thus:-

3. It is clear from the record that the present FIR has been registered against Rashpal Singh, Puran Singh, Avtar Singh and Harbhajan Singh under Section 420 IPC wherein charge has been framed against the accused under Section 420 read with Section 120-B IPC. It is also to be appreciated that the said FIR was registered after an enquiry on the written complaint moved by the present complainant. Through the present application, complaint wants to adduce six persons as a prosecution witnesses along-with record as detailed in the application under Section 311 Cr.P.C.

4. As per section 311 Cr.PC which is reproduced as follows:-

Power to summon material witness, or examine person present- Any court may, at any stage of any inquiry, trial or other proceedings under this Code, summon any person 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.

Undoubtedly vide discretions have been given to Court for summoning, recalling and re-examining any person, however, the same is to be exercised in the interest of justice equity and fair-play. It is to be appreciated that the complainant through this application intends to setup a whole new set of record against accused in the shape of witness and record, when the same is neither submitted by the investigating agency at the time of final report nor the same is reported to be presented through any further investigation.

5. It is also considered that the present application has not not forwarded by L.d. APP for the State, even otherwise, the document and the witnesses which the complaint intends to brought on record through the present application, are not relevant for the proper adjudication of the present case and accordingly, application in hand is hereby disallowed.”

8. Having heard learned counsel for the parties and upon a careful perusal of the impugned order and the reasons recorded therein, I am of the considered opinion that the grounds assigned by the trial Court for dismissing the petitioner’s application are not well founded.

9. One of the reasons assigned by the trial Court for declining the application was that the documents sought to be produced were not relevant for the proper adjudication of the case. However, a bare perusal of the impugned order reveals that there is no discussion whatsoever on the nature of the documents, their evidentiary value, or their necessity for establishing the prosecution version. In the absence of any reference to the documents and without returning a reasoned conclusion as to why they are not relevant for completing the chain of events, alleged in the FIR, the finding recorded

by the Court cannot be said to be based upon an objective reasoning, consideration and assessment of the relevancy and admissibility alongwith evidentiary value of the testimony of such witnesses and the documentary record.

10. So far as the second reason cited by the learned Sub-Divisional Judicial Magistrate, Batala, for declining the application that the same had not been moved by the Public Prosecutor but by the complainant himself is concerned, I am of the opinion that the said reasoning is improper. It is not the mode by which the Court's jurisdiction was invoked but the necessity and relevance of the evidence sought to be brought on record which should have been the guiding factor for the trial Court to come to a conclusion about whether such application was required to be allowed or not. The underlying principle for consideration of such applications being whether the evidence is essential for just decision of the case or not. Instead of applying this substantive test, the trial Court adopted a technical approach and rejected the application solely on the ground of who had filed it, without examining whether the witnesses and documents sought to be summoned were germane to the issues arising in the trial or were required to complete the chain of events forming the foundation of the prosecution case. Such an approach, bereft of an objective evaluation of the evidentiary need and relevance, defeats the very purpose of the provision and results in an erroneous exercise of jurisdiction.

11. Resultantly, I find that the order passed by the Court of Sub Divisional Judicial Magistrate, Batala is devoid of meritorious reasoning.

The same is consequently set aside. The matter is remanded to the Sub

Divisional Judicial Magistrate, Batala to pass a fresh order in accordance with the law and after taking into consideration the findings recorded herein above.

The present petition is allowed.

(VINOD S. BHARDWAJ)
JUDGE

DECEMBER 01, 2025
Vishal Sharma

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