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

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Date of Decision : 15.01.2026

Girraj

.....Petitioner

Versus

State of Haryana and another

.....Respondents

CORAM: HON'BLE MR. JUSTICE SANJAY VASHISTH

Present: Mr. Dinesh Arora, Advocate
for the petitioner.

Mr. Kanwar Sanjiv Kumar, AAG, Haryana.

Mr. Nipun Gupta, Advocate for
Mr. Harsh Jain, Advocate
for respondent No. 2

SANJAY VASHISTH, J. (Oral)

1. Instant petition, under Section 482 Cr.P.C., has been filed for setting aside order dated 26.11.2019 (Annexure P-1) passed by learned Judicial Magistrate 1st Class, Faridabad, whereby application moved by complainant under Section 311 Cr.P.C. for examining two witnesses alongwith necessary documents has been dismissed.

2. As per application, it is the case of prosecution that respondent No. 2 – Krishan Kumar (accused) forged the signature of Bajrang Dass, executed GPA in favour of himself and then executed the GPA in favour of the complainant. During the course of investigation, statement of witness Bajrang Dass was recorded who stated that he never signed any document in Hindi and GPA, which is alleged to be executed by Bajrang Dass in favour of Krishan Kumar, bearing signature of Bajrang Dass **in Hindi**.

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It is further contended that the sale deed, by virtue of which Bajrang Dass was owner of the property has not even been mentioned in the GPA, hence, the summoning of Sub Registrar, Balabhgarh alongwith the record/sale deed No. 4927 dated 01.07.1981, is required to prove that Bajrang Dass actually used to sign the documents in English.

It has also been contended that Bajrang Dass had actually executed GPA dated 30.04.2013 in favour of 'Saurab' bearing GPA No. 2079. It is further contended that Sub Registrar, Noida has not been joined in regard to the actual GPA 2079 of 2013. Therefore his appearance is also very much essential to prove the GPA No. 2079 of 2013. Further, it is submitted that Bajrang Dass, actual owner of property was though cited as witness in the list of witnesses, but has not been examined as witness in the witness box. Therefore, in the absence of any statement on behalf of Bajrang Dass before the Court or any supporting version of witness Saurab (actual GPA of Bajrang Dass), great prejudice has been caused to the complainant/petitioner. Therefore, petitioner prays for grant of some reasonable opportunity to prove his stand, detailed in the application even subject to the payment of some costs to compensate the other side.

3. On the other hand, leaned counsel appearing for respondent No. 2 submits that allowing of application at this stage would amount nothing but filling up the lacuna and at such a belated stage, plea is not required to be accepted.

4. I have gone through the record and considered the submissions.

5. In the statement dated 28.11.2013 recorded during investigation under Section 161 Cr.P.C., it has been stated that he (Bajrang Dass), Shashi Kant Muddra and Kamla Mimani had bought one Plot No.8-9-10, Block SGM Nagar, Faridabad measuring 965 Sq. yards together and in 2013 all three of them had executed GPA



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in favour of Saurab. It has also been specifically stated that in the statement that *“Since time of my senses till date I have always signed in English, I have never signed in Hindi. I do not know Krishna Kumar. The GPA executed in favour of Krishna Kumar my signatures are in Hindi, which are forged. I did not sign the same.”*

6. Taking into consideration the plea of the petitioner and his version in FIR and also the statement recorded of Bajrang Dass during investigation, it appears that examination of the witness Bajrang Dass is very much required.

7. Since the said witness is not being produced by the prosecution in the witness box nor Saurab has appeared to support the case of the prosecution, it would be appropriate if the complainant (petitioner herein) is afforded some reasonable opportunity to lead the evidence.

Moreover, while considering the plea, this Court requires to take a liberal view more for the reason that the petition is pending for last more than a period of five years and the proceedings are at halt, as passing of final order was stayed by this Court vide order dated 22.01.2020. The very purpose of leading of the evidence by granting reasonable opportunity has been considered in the case of ***T. Nagappa vs. Y.R. Muralidhar, 2008(5) SCC 633***, paragraphs 8 and 11 read as follows:

“8. An accused has a right to fair trial. He has a right to defend himself as a part of his human as also fundamental right as enshrined under Article 21 of the Constitution of India. The right to defend oneself and for that purpose to adduce evidence is recognized by Parliament in terms of Sub-section (2) of Section 243 of the Code of Criminal Procedure, which reads as under:

*“243 Evidence for defence-(1) ****

(2) If the accused, after he has entered upon his defence, applies to



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the Magistrate to issue any process for compelling the attendance of any witness for the purpose of examination or cross-examination, or the production of any document or other thing, the Magistrate shall issue such process unless he considers that such application should be refused on the ground that it is made for the purpose of vexation or delay or for defeating the ends of justice and such ground shall be recorded by him in writing:

Provided that, when the accused has cross-examined or had the opportunity of cross-examining any witness before entering on his defence, the attendance of such witness shall not be compelled under this Section, unless the Magistrate is satisfied that it is necessary for the ends of justice.”

9. xxxx

10. xxx

11. *The issue now almost stands concluded by a decision of this Court in Kalyani Baskar v. M.S. Sampooram- (in which one of us, L.s. Panta, J., was a member) wherein it was held: (SCC p. 262, para 12)*

"12. Section 243(2) is clear that a Magistrate holding an inquiry under CrPC in respect of an offence triable by him does not exceed his powers under Section 243(2) if, in the interest of justice, he directs to send the document for enabling the same to be compared by a handwriting expert because even in adopting this course, the purpose is to enable the Magistrate to compare the disputed signature or writing with the admitted writing or signature of the accused and to reach his own conclusion with the assistance of the expert. The appellant is entitled to rebut the case of the respondent and if the document viz. the cheque on which the respondent has relied upon for initiating criminal proceedings against the appellant would furnish good material for rebutting that case, the Magistrate having declined to send the document for the examination and opinion of the handwriting expert has deprived the appellant of an opportunity of rebutting it. The appellant cannot be



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convicted without an opportunity being given to her to present her evidence and if it is denied to her, there is no fair trial. 'Fair trial' includes fair and proper opportunities allowed by law to prove her innocence. Adducing evidence in support of the defence is a valuable right. Denial of that right means denial of fair trial. It is essential that rules of procedure designed to ensure justice should be scrupulously followed, and the courts should be jealous in seeking that there is no breach of them."

8. The guiding principle in the judgment of *T. Nagappa's case (supra)* is that an accused must be afforded an opportunity to defend himself as part of his fundamental right. Therefore, such a right should not be denied on mere technicalities, particularly when granting permission to lead evidence of his choice is not causing any prejudice to the other side.

9. In view of the above, the petitioner is granted two effective opportunities to lead evidence which has been prayed in the application filed under Section 311 Cr.P.C. and let this exercise be completed within four weeks from today.

However, it is clarified that before leading evidence, the petitioner would compensate respondent No. 2 by paying him an amount of Rs. 20,000/-.

10. Except two effective opportunities, no other chance would be afforded to the petitioner.

11. Petition stands disposed of in the above terms.

(SANJAY VASHISTH)
JUDGE

January 15, 2025

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Whether Speaking/Reasoned: YES/NO
Whether Reportable: YES/NO