

2023 SCC OnLine P&H 213

In the High Court of Punjab and Haryana at Chandigarh
(BEFORE AMAN CHAUDHARY, J.)

CRM-M-8107-2018 (O&M)

Anil Sehgal ... Petitioner;

Versus

State of Punjab and Others ... Respondent.

And

CRM-M-8363-2018 (O&M)

Anil Sehgal ... Petitioner;

Versus

State of Punjab and Others ... Respondent.

CRM-M-8107-2018 (O&M) and CRM-M-8363-2018 (O&M)

Decided on March 10, 2023

Advocates who appeared in this case:

Ms. Aashmia Narula, Advocate for Mr. Hemant Bassi, Advocate for the petitioner.

Mr. Kamalpreet Bawa, AAG Punjab.

The Judgment of the Court was delivered by

AMAN CHAUDHARY, J.:— This common order shall dispose of the above-mentioned two criminal miscellaneous petitions as they arise out of same FIR.

2. Present petitions have been filed under Section 482 CrPC for quashing of order dated 19.01.2017, Annexure P-11, passed by learned Judicial Magistrate 1st Class, Ludhiana and for issuance of appropriate directions to the learned Judicial Magistrate 1st Class, Ludhiana to consider and decide the applications dated 17.10.2010 and 24.01.2012 arising out of FIR No. 18 dated 28.02.2007, Annexure P-1, registered at Police Station Ladhawal, under Sections 406, 420, 468, 471, 120-B IPC.

3. The allegations against the petitioner were that the complainant who was promoter-Director of M/s Sutlej Fun Resorts Limited having 30% shares of its share and for raising the loan amount from various financial institutions including PSIDC and PFC etc., furnished sureties and securities including the personal undertakings and signed various loan agreements thereby also parting with his retained titled deeds in the form of equitable mortgage. Similarly accused G.D. Agarwal and A.K. Agarwal along with other Directors deposited their respective title deeds to secure the loan facilities, however, they were having mala fide. dishonest intentions from the very beginning as they deposited

forged and fictitious title deeds. The accused never adhered to the condition imposed by PSIDC at the time of sanctioning and grant of loan that there should be no change in Board of Directors and management of the Company except with prior approval of PSIDC and PFC, however, they compelled the complainant to sign an agreement as per which he was to dispose of 20% share in favour of G.D. Agarwal and 10% in favour of Mukesh Khullar and the entire amount of share of 30% held by the complainant shall be paid to him on or before 31.07.1996 and 30.10.1996 respectively which has not till date been given to him. Rather, they registered false and frivolous criminal case against the petitioner and his relatives. In the year of 2006, the accused flatly refused to make the payment. They had caused wrongful loss to the complainant and wrongful gain to themselves by getting the share of the complainant transferred and forging his signatures. Consequently, the challan in the case was presented on 21.09.2009. The petitioner filed an application dated 03.11.2016 under Section 91 read with Section 311 CrPC seeking to produce the true copy of original share certificates to which reply was filed on 21.11.2016 and it came to be dismissed vide order dated 19.01.2017.

4. Learned counsel contends that the learned trial Court has erred while dismissing the application primarily on the ground of hyper-technicality as the complainant was having no *locus standi* to file the same and ought to have been filed by the prosecution. In this regard he relies on *Tata Steel v. Atma Tubes*, (2013) 2 RCR (Cri) 1005.

5. Learned State counsel submits that application of the petitioner was rightly dismissed by the learned trial Court as the petitioner had no *locus standi* and there is no error in the impugned order.

6. Heard.

7. It is apposite to refer to Section 311 CrPC which reads thus:—

“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 as a witness, or examine 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.”

8. The sole ground taken by the petitioner in the application was that though all the share certificates were with the Police but only 12 were produced. The Court dismissed the application while observing thus:—

“3. The application is contested by accused Vikas Shrivastva by filing the reply on the ground that the accused has right of speedy

trial under article 21 of Constitution of India. The matter in question relates the year 1993 and FDR regarding alleged incidents was registered in the 2007, whereas challan in the case was filed on the 10 of Nov 2009 and charge in the above said case was framed on 4th of June 2011 and since then the case of the prosecution is hanging for prosecution evidence and has not advanced from that stage and now this application and file to prolong the case has such application is totally false and frivolous. The complainant has no right or locus standi to file the present application much less under section 91 of Code of Criminal Procedure as the said provision is enabling provision enabling the court or any officer in charge MAR 2017 Police Station to consider the production of any document desired by it from any person and thus the same is not empowered the complaint will walk the power of the said provision to produce on record the alleged documents stated to be in his possession. Similarly a complainant has no right to invoke the provisions of the section 311 of Code of Criminal Procedure which are otherwise also not attractive in the present case and the said provision cannot be used to prejudice the case of the accused and to fill the lacuna in the case and is liable to be dismissed. No description of the alleged share certificate so to be produced for record have been given. No copies of the same have been put on record otherwise also the alleged forge evidence has no relevancy to the charging threats faced by the accused. Similarly reply filed by the accused Ashwani Kumar.

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6. The present application has not been moved by the public prosecutor and have been directly moved by the complainant through his private counsel. The complainant failed to show his locus standi to file the present application as per latest verdict of Hon'ble Supreme Court of India in 2016 (4) Punjab Law Reporter 725 it has been held that role of the informant for the private parties limited it during the prosecution of a case in a court. The counsel engaged by him is required to act under the directions of public prosecutor. As far as section 302 of Code of Criminal Procedure is concerned, power is conferred on the Magistrate to grant permission to the complainant to conduct the prosecution independently when a complainant wants to take the benefit have provided under section 302 of Code of Criminal Procedure, he is to file a written application making out a case. And in the present case no such application has been filed so the complainant failed to prove his locus standi to file the present application.

7. On the other aspect of application, regarding tendering of share certificates same are not annexed with the charge-sheet so it were not considered while framing of the charge. So no notice of these

documents is given to the accused and if they are included at this stage, it will definitely cause prejudice to the accused which against the criminal law.

9. The complainant-petitioner had not only filed the application at an advanced stage of proceedings but was even unable to establish his right or locus standi to file the application, much less under Section 91 Cr. P.C., as the same is an enabling provision for the Court or any officer incharge of the police station to consider the production of any document found necessary or desirable for the purpose of any investigation, trial or other proceedings under the CrPC. The power under Section 311 CrPC to summon a witness is conditioned by the requirement if it is essential to the just decision of the case, as observed by Hon'ble The Supreme Court of India in the case of *Varsha Garg v. State of Madhya Pradesh*, 2022 SCC OnLine SC 986, which also the complainant in the present case failed to demonstrate. Still further, no description of the alleged share certificates was also given, those which were sought to be produced on record, as such, the trial Court rightly came to a conclusion that the alleged forged evidence has no relevancy in the case.

10. An application under Section 311 Cr. P.C. must not be allowed only to fill up a lacuna in the case of the prosecution, or of the defence, or to the disadvantage of the accused, or to cause serious prejudice to the defence of the accused, or to give an unfair advantage to the opposite party. Further, the additional evidence must not be received as a disguise for retrial, or to change the nature of the case against either of the parties, as held by Hon'ble The Supreme Court of India in the case of *Natasha Singh v. CBI (State)*, 2013 Cr.L.R. (SC) 582 and in the present case, the said share certificates were not annexed with the charge sheet, thus were not considered while framing of the charge and their inclusion at the said stage would definitely caused prejudice to the accused and also amounts to filling up the lacuna.

11. The power conferred under Section 311 CrPC should be invoked by the court only to meet the ends of justice. The power is to be exercised only for strong and valid reasons and it should be exercised with great caution and circumspection. The court has wide power under this Section but the same has to be exercised after taking into consideration the facts and circumstances of each case. The power under this provision shall not be exercised if the court is of the view that the application has been filed as an abuse of the process of law as held in *Swapan Kumar Chatterjee v. CBI*, (2019) 14 SCC 328, whereas in the case in hand, the learned trial Court also noticed the fact that the matter related to the year 1993 and charges were framed on 04.06.2011 and therefore, the complainant was not allowing the case to proceed.

12. In so far as CRM-M-8363-2018, is concerned, seeking direction to trial Court to decide the applications, Annexures P-7 and P-8, the learned State counsel has submitted that the same have already been decided, rendering the petition infructuous.

13. In view of the discussion made hereinabove, this Court finds no illegality of infirmity in the order impugned in CRM-M-8107-2018. Thus, the said petition is hereby dismissed, while CRM-M-8363-2018 is disposed of as having been rendered infructuous.

14. A photocopy of the order be placed on the file of the connected case.

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