
(2014) 07 P&H CK 0455

In the Punjab And Haryana At Chandigarh

Case No : Crl. Misc. No. M-22549 of 2014 (O&M)

Mahant Gursharan Dass Chela Mahant Sewa Dass

APPELLANT

Vs

State of Punjab

RESPONDENT

Date of Decision : 23-07-2014

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 311, 482
Penal Code, 1860 (IPC) — Section 148, 149, 302, 304, 307

Citation : (2014) 07 P&H CK 0455

Hon'ble Judges : Anita Chaudhary, J

Bench : Single Bench

Advocate : Vivek Goel, Advocate for the Appellant; Navneet Singh, Advocate for the Respondent

Final Decision : Dismissed

Judgement

Anita Chaudhary, J.

Crl. Misc. No. 21629 of 2014

1. Application is allowed and statement, Annexure P-4, is taken on record.

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2. This is a petition u/s 482 of Criminal Procedure Code for setting aside the order dated 28.02.2014 (Annexure P-3) passed by Additional Sessions Judge, Jalandhar, who dismissed the application filed u/s 311 Cr. P.C. The petitioner was wanting his own recall.

3. FIR No. 90 dated 29.07.2008 was registered at Police Station Mehatpur, District Jalandhar on the statement made by the present petitioner. The allegations levelled by the complainant were that the accused armed with weapons caused injuries to him. The police investigated into the complaint and filed challan against respondents No. 2 to 12.

4. Charge was framed and the statement (Annexure P-4) of the complainant was

recorded on 23.09.2013. The complainant made a statement and thereafter was cross examined. He filed an application later that he wanted to make the statement again and he had to resile from the earlier statement as he was under duress. He had pleaded that now he had gathered courage to depose the true facts before the Court and therefore he may be permitted to make the statement again. The trial Court dismissed the application making the following observations:-

Perusal of the file reveals that Mahant Gursharan Dass has filed a complaint u/s 307/436/452/427/506/148/149 of IPC against the accused. The charge was framed against the accused on 15.05.2013. The complainant Mahant Gursharan Dass appeared in the witness box on 23.09.2013 and deposed as per his complaint in examination in chief. He was cross examined. No request was made for reexamination of this witness on 23.09.2013. In examination in chief, he has not resiled from his statement. He was never declared hostile by the counsel for complainant or learned Addl. PP. As per u/s 311 of Cr. P.C., the court can summon any witness or recall or re-examine any person already examined if his evidence appears to it to be essential for the just decision of the case. In the present case, the allegation of the complainant are that he was under threat and duress. Therefore, he could not depose properly. But his statement dated 23.09.2013 clearly shows that in his examination in chief he had deposed as per his statement. Had he been under threat or coercion, he would have not supported the case of prosecution in examination in chief and permission would have been sought for re-examining him as he failed to identify the accused present in the court in cross examination. His statement was recorded on 23.09.2013 whereas the present application has been moved on 08.01.2014. No document/application has moved to any superior authority or in the court regarding the threat or coercion given by the accused persons. He kept mum for four months and now he has moved the present application. Since, he was never declared hostile and no request for re-examination was made. Therefore, it cannot be said that he was under threat or duress. In such circumstances, the prosecution cannot be allowed to fill up the lacuna and application has no merits. Therefore, the application is hereby dismissed.....

5. The petitioner has challenged the order and is seeking his recall and the argument put forth on behalf of the petitioner is that he had made a statement in the Court under threat and he was ready to identify the accused in the Court. It was urged that the petitioner had approached the Superintendent of Police with an application that there was a threat, but no FIR was registered and it was essential that he makes a statement in the Court for proving the case of the prosecution.

6. On the last date of hearing, the petitioner was asked to place on record the copy of statement made by him before the trial Court. The same had been taken on record as Annexure P-4. A perusal thereof shows that the complainant had given a vivid account of the incident, but he refused to identify the persons who

had attacked him in the cross-examination and deposed that the persons who were present in the Court were not those persons. In the cross-examination the defence had put the case of the prosecution to the witness and the petitioner denied their involvement. He admitted that he had been convicted in the main case registered on the same day u/s 302 IPC and was sentenced to seven years" rigorous imprisonment u/s 304, Part-II IPC. He had stated that he had given the complaint on account of some misunderstanding.

7. The complainant had made the statement in the Court on 23.09.2013. A month later, he is stated to have given a complaint to the DSP of the area that he had been threatened. Four months later, the application u/s 311 Cr. P.C. was filed in the Court by the complainant through his counsel.

8. The petitioner has invoked the provisions of Section 482 Cr. P.C. which can be invoked in rare and exceptional circumstances. The petitioner failed to identify any accused and refused to identify them. He did not disclose to the trial Court that he was under threat and required security. Four months after deposing before the Court he now wants to change his statement and identify the culprits. If such a course is permitted there will be no end and it would be a mockery of procedure and law. No special circumstances have been made out. The petitioner had faced a trial u/s 302 IPC regarding the incident and the version in the complaint was a cross-version and is borne out from the cross examination of the petitioner. No case for invoking the provisions of Section 482 Cr. P.C. is made out. Dismissed.