
(2016) 10 P&H CK 0198

In the Punjab And Haryana At Chandigarh

Case No : Crl. Revision No. 3896 of 2016 (O&M)

Sant Gurmeet Ram Rahim Singh

APPELLANT

Vs

Central Bureau of Investigation

RESPONDENT

Date of Decision : 24-10-2016

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 311
Penal Code, 1860 (IPC) — Section 376

Citation : (2016) 4 RCRCriminal 771

Hon'ble Judges : A.B. Chaudhari, J.

Bench : Single Bench

Advocate : S.K. Garg Narwana, Senior Advocate with Naveen Gupta, Advocate, for the Petitioner

Final Decision : Dismissed

Judgement

A.B. Chaudhari, J. (Oral)—This revision petition is directed against order dated 18.10.2016 passed by Special Judge (CBI) Haryana at Panchkula by which the application dated 13.10.2016 filed by the petitioner for directing the Central Bureau of Investigation (CBI)/prosecution to provide copies of statements of prosecutrix PW-5 and PW-10 recorded by Investigating Officer (IO) Mr. K. L. Raina in the year 2003 and consequently to defer the further recording of evidence of Mr. K. L. Raina and also to summon PW-5 and PW-10 for further cross-examination in order to confront them with the statements recorded by Mr. K.L. Raina.

2. The CBI had undertaken investigation for the serious offence of rape etc. against the petitioner and the charge sheet was filed. The trial Court had framed charges against the petitioner in the year 2008 and thereafter the trial had commenced. The entire evidence of the prosecution as well as of defence was recorded by the learned Special Judge (CBI). Even the defence examined several witnesses. The prosecution completed its arguments and then it was the turn of the defence to advance the arguments. The petitioner had filed two applications

dated 13.07.2016 and 19.07.2016. In the application dated 13.07.2016 under Section 311 Cr.P.C. it was prayed that Mr. K. L. Raina along with police case diary, as a Court witness, be summoned. While in application dated 19.07.2016 direction was sought for production of copies of statements of PW-5 and PW-10 recorded under Section 161 Cr.P.C. recorded by Mr. K. L. Raina. Both these applications were rejected by the Special Judge (CBI) vide common order dated 06.08.2016 (Annexure P-5). The order dated 06.08.2016 was confirmed by this Court on 02.09.2016 in Crl. Revision No. 2982 of 2016. It appears that the petitioner then put to challenge both the aforesaid orders i.e. by Special Judge (CBI) and of this Court in SLP (Crl.) No.7262 of 2016 and it appears from the record of the proceedings of the Apex Court that the order dated 02.09.2016 made by this Court in Crl. Revision No.2982 of 2016 was challenged since there is no reference to the common order dated 02.09.2016 passed in Crl. Revision No.2863 of 2016 in the record of proceedings. The Apex Court vide order dated 04.10.2016 allowed the examination of Mr. K.L. Raina (IO) as a court witness. His evidence was recorded as ordered by the Apex Court on 13.10.2016 and the cross-examination was also completed on the same date i.e. on 13.10.2016. The petitioner filed the application in question (Annexure P-8) which came to be rejected by the order impugned.

3. Assailing the impugned order, the learned Senior Advocate for the petitioner contended that the trial Court committed an error in rejecting the application on the ground that the Apex Court had not disturbed the orders made by the trial Court as well as this Court by which the prayer for direction to produce copies of statements of PW-5 and PW-10 was declined and that, therefore, the trial Court landed in the error, all the more because immediately after recording the evidence of Mr. K. L. Raina, the application in question was filed. He submitted that the contradictions in any event are required to be put to the witness first before getting the same proved from the police officer who recorded the statement under Section 161 Cr.P.C. and, therefore, it was essential to have the production of the statements of PW-5 and PW-10 and also to recall them as witnesses for further cross-examination and thereafter recalling Mr. K. L. Raina for further cross-examination. He cited number of decisions and heavily relied on the decision made in the case of V.K. Mishra and another v. State of Uttarakhand & another reported as (2015) 9 Supreme Court Cases 588 paras 15 to 20. He has also relied on several judgments of which compilation was supplied to this Court.

4. The learned Senior Advocate for the petitioner then contended that the petitioner wanted to bring before the Court the fact that PW-5 and PW-10 prosecutrix did not say a word about the incident in question or the allegations of rape against the petitioner in the statements recorded under Section 161 Cr.P.C. by Mr. K. L. Raina and that could be done only after the recall of all these three witnesses for further cross-examination. He then submitted that non-supply of the statements of those two witnesses recorded by the I.O. under Section 161 Cr.P.C, would amount to denial of fair chance and fair trial. He also submitted

that the trial Court did not refer to various reported judgment cited by him. Finally he prayed that his request be granted.

5. Having regard to the entire matter and having gone through the entire paper book, this Court does not think it fit to issue notice to the other side. Accordingly, the Senior Advocate for the petitioner was heard at length.

6. I have perused the impugned order as well as the reasons given by the learned trial Judge.

7. It is true that Apex Court had made an order directing examination of Mr. K. L. Raina as a Court witness. It would be appropriate to record the relevant portion of order dated 04.10.2016:

"Having heard learned counsel for the parties, we are only inclined to modify the order passed by the trial Court as well as the High Court to the extent that one, K.L.Raina, a former investigating officer, shall be summoned by the trial court as a court witness. The summoning and examining shall be completed within a period of four weeks. Needless to say, after he is summoned and examined as a court witness, the procedure enshrined in Code of Criminal Procedure (Cr.P.C.) shall take its own course."

8. The order of this Court dated 02.09.2016 which was impugned in the aforesaid SLP was a common order in the matter of rejection of prayer to call Mr. K. L. Raina as a court witness and secondly rejection of prayer to direct the prosecution to supply the copies of statements under Section 161 Cr.P.C. of PW-5 and PW-10 recorded in the year 2003. The above order made by the Apex Court is only in relation to examination of Mr. K. L. Raina as court witness. It has not been shown that the Apex Court has dealt with the other part of the order dated 02.09.2016 made by this Court regarding rejection of request for supply of copy of documents. Be that as it may, the following salient features in the present context of the case would be relevant:

9. The charges were framed against the petitioner under Sections 376 & 506 IPC on 06.09.2008. The prosecution had completed recording of its entire evidence. Earlier, the petitioner had made an application, on which the trial Court had made an order dated 01.12.2007 (Annexure P-2) mentioning about the supply of copies of statements and adjourned the proceedings to a further date and then further order dated 22.12.2007 (Annexure P-3) was passed. I quote the relevant portion from the said order dated 22.12.2007 which is as under:

"At this stage, Shri Garg has raised an objection that neither the copy of the statement of Khatta Singh dated 26.12.2006 nor the copies of the statements of 130 sadhvis allegedly recorded by the CBI during investigation of the case and as mentioned in para no.16.4(iv) at page 6 of the challan, have been supplied to him. This objection has however been opposed on behalf of CBI on ground that as required copies of all the relied upon documents as well as statements of the witnesses which are proposed to be examined by the prosecution during trial as

per report u/s 173 Cr.P.C. have been supplied to the accused. The statement of Shri Satish Dagar, DSP, CBI the investigating officer of the case, has also been recorded to the effect that he has forwarded the police report u/s 173 Cr.P.C. along with documents relied upon and the statements of witnesses which are proposed to be examined during the course of trial and that the copies of all the relied upon documents as well as statements of witnesses whose names have been mentioned in the list of witnesses attached with the challan have been supplied to the accused. In the light of statement the investigating officer Shri Satish Dagar, DSP, CBI and the fact that copies of all the relied upon documents as well as statements of witnesses as per the list attached with the report u/s 173 Cr.P.C. have been supplied to the accused, the said request of Shri Garg with regard to supply of statement of Khatta Singh dated 26.12.2006 as well as statements of 130 sadhvis allegedly recorded by the CBI during investigation and mentioned in para 16.4 (IV) of the challan being not relied upon by the prosecution cannot be conceded and the same stands declined.

In the case in hand, now complete copies of all the relied upon documents have been supplied to the accused. However, if copy of any document remains to be supplied to the accused or found to be not readable, the learned defence counsel shall be at liberty to inspect the court record/file in accordance with law prior to the date fixed and shall not raise any objection with regard to supply of documents on the next date fixed as sufficient opportunities have already been provided for the said purpose."

10. It is clear from the above part of order dated 22.12.2007 that the defence counsel was given liberty to inspect the entire Court record/file and stipulation was made that further no such objection shall be raised about supply of documents.

11. The evidence of PW-5 and PW-10 was recorded and these witnesses were also cross-examined at length. The prosecution completed its arguments after closing its case so also the defence which examined several witnesses and it was turn of the defence to commence arguments. But the aforesaid applications dated 13.07.2016 and 19.07.2016 were filed. After the Apex Court allowed the examination of Mr. K. L. Raina as a court witness vide order dated 04.10.2016, Mr. K. L. Raina was examined and cross-examined. He stated in his examination-in-chief that he was incharge as Investigating Officer only for six to seven months i.e. from July 2003 to January/February 2004 and he recorded several statements. He categorically stated as under during cross-examination:

"I was Dy. SP CBI at the time of recording statements of Sarjeevan and Sapna under Section 161 Cr.PC. During my investigation, I recorded statements of about 100 (one hundred) Sadhvis. Dera means Dera Sacha Sauda, Sirsa. I identify the accused, who is present through video conferencing and he was Head of Dera Sacha Sauda, Sirsa at that time. Out of the Sahdvis examined by me, around 20-30 Sahdvis had left the dera and others were residing in the Dera. Sahdvis Sarjeevan and Sapna had left the Dera at that time. I cannot say

that Sarjeevan and Sapna were victims when I was investigating this case. Perhaps I had recorded statement of Sapna twice and so far as my memory goes, I once recorded her statement by going to Hissar. Once I recorded statement of Sapna at Sirsa and once I recorded her statement at Pushpak Complex, Hissar where her husband was doing job. First statement of Sapna was recorded at Sirsa by me and second statement of Sapna was recorded at Hissar by me. I do not remember the date of recording statements of Sapna but it was in the year 2003. I do not remember the time period between the two statements. I recorded second statement of Sapna as some other girl had told that she might be knowing about the allegations made in the anonymous letter. During my investigation, Sapna did not level any allegation of rape with her by the accused. Sapna did not told to me that accused was like her father. Sapna did not told to me that her marriage was solemnized in the Dera premises. Volunteered that she had simple disclosed about her marriage only. I have not brought statements under Section 161 Cr.P.C. of Sapna and Sarjeevan. I have gone through those statements recorded by me. I have gone through those statements of Sapna and Sarjeevan yesterday or a day before yesterday to refresh my memory.

XXX..... XXX..... XXX..... XXX.....

During my investigation, Sadhvi Sarjeevan did not level any allegation of rape with her by the accused. Volunteered she had told to me that everything was not right in the Dera. Other Sadhvis also did not level any allegation of rape by the accused during my investigation. Volunteered that some other girl/sadhvi Rajneesh had also disclosed that everything was not right in the Dera. I had recorded statements of Sapna and Sarjeevan without any addition, omission and alteration."

12. It is not in dispute that the trial Court as well as this Court had categorically rejected the prayer made by the petitioner for supply of the statements in the earlier round of litigation. It is also not in dispute that the petitioner had approached the Apex Court and the Apex Court asked the trial court to examine Mr. K. L. Raina (IO) as a court witness but then insofar as the second part of the order of the trial Court as well as this court recording the supply of the statement, is concerned, there is no order from the Apex Court to supply the copies of statements.

13. The learned Senior Advocate for the petitioner further placed reliance on the following observation made by the Apex Court in its order:

"Needless to say, after he is summoned and examined as a court witness, the procedure enshrined in Code of Criminal Procedure (Cr.P.C.) shall take its own course."

14. Elaborating his arguments, learned Senior Advocate contended that the aforesaid observations by the Apex Court means the petitioner was entitled to request the trial Court to direct the CBI to supply the statements of PW-5 and

PW-10, recall them for cross-examination so also to recall Mr. K. L. Raina for his further cross-examination.

15. With due respect, I am unable to subscribe to the arguments made by learned counsel for the petitioner. It is not possible for this Court to put something in the said order which is not there. Even otherwise, in the light of the aforesaid observations and the salient features, I do not think that the Court would exercise its power under Section 311 Cr.P.C. to recall the witnesses. It cannot be forgotten that the evidence of PW-5 and PW-10 was recorded a few years before and they are married women. To my mind, it would amount to not only embarrassment to these women but also to face the ordeal of cross-examination. At any rate, the petitioner had availed of lot of opportunities.

16. From the submissions made by the learned Senior Advocate for the petitioner the only object of calling PW-5 and PW-10 appears to be to put to them that they never disclosed about the alleged incident of rape when their statements were recorded under Section 161 Cr.P.C. by Mr. K. L. Raina in the year 2003 and as fairly stated by the learned counsel there is no other object except this. Mr. K. L. Raina has clearly stated that they i.e. PW-5, PW-10 and other Sadhvis had not made allegation about the rape when he had recorded those statements. When the aforesaid evidence has come on record, I think there is no further reason for the petitioner to make the same prayers over and again when they were rejected by the trial Court as well as this Court.

17. There can be no quarrel about the principles laid down in the judgments cited by learned counsel for the petitioner and hence it is not necessary for me to discuss each and every judgment cited.

18. In the result, I find no merit in the instant revision petition. Hence, Crl. Revision No.3896 of 2016 is, therefore, summarily dismissed.