

**CRM-M-49835-2021****1**

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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH**CRM-M-49835-2021**
Date of De : 21.03.2025

Subhash Chander Patil

.....Petitioner

Versus

State of Haryana

.....Respondent

CORAM: HON'BLE MS. JUSTICE KIRTI SINGHPresent: Mr. Amit Khari, Advocate
for the petitioner

Mr. Anmol Malik, DAG Haryana

KIRTI SINGH, J.(Oral)

1. The present petition has been filed under Section 482 Cr.P.C. for quashing/setting aside order dated 23.11.2021 (Annexure P-1) passed by learned Additional Sessions Judge/Fast Track Court (PCSO) in case FIR No.652, dated 17.10.2018, registered under Sections 323, 354, 458, 506 IPC and Section 10 of POCSO Act registered at Police Station Quilla Panipat as well as all the subsequent proceedings arising out of the said order whereby the petitioner has been summoned as a witness despite being a Notary Public, which is not sustainable in the eyes of law.

2. Learned counsel for the petitioner submits that learned Additional Sessions Judge/Fast Track Court (POCSO) while hearing the above mentioned case has summoned the petitioner as a witness for examining the record/register pertaining to affidavit produced on file by the defence i.e. affidavit attested/registered at Notarial Register via entry No. 2538 dated 02.05.2019. The argument advanced by learned counsel for the petitioner is that the petitioner being



a Notary Public, it is his job to routinely attest documents. Placing reliance on the letter of the Registrar General of this Court, addressed to the District Courts falling under its jurisdiction, wherein it is mentioned that it shall not be desirable to summon Notary Public for the purpose of evidence to prove the attestation and authentication of any instrument by the Notary Public, he contends that the trial Court cannot compel the petitioner to appear before it for evidence. He submits that the impugned order issuing bailable warrants against the petitioner for compelling, his appearance is in violation of the said letter and would subject the petitioner to unnecessary harassment.

3. *Per contra*, learned State counsel contends that the letter dating back to the year 2006 referred to by the learned counsel for the petitioner is only a suggestion and not a blanket ban on calling of Notaries to appear when summoned by the trial Court. He submits that despite the petitioner being repeatedly summoned not only did he fail to appear, but also did not produce the record being called for. Hence the trial Court has rightly passed the impugned order.

4. Heard learned counsel for the parties and also gone through the case file.

5. Trite to say that it is well within the power of the trial Court to summon any person whose witness it deems necessary for the fair adjudication of a case.

6. The Rajasthan High Court in *Arvind Kumar Chokhra v. State 2009(11) RCR (Criminal) 185*, dismissed the petition challenging summoning of a Notary as a witness by observing that:

7. In the criminal case, when the Trial court has considered it proper to summon for evidence the petitioner who was, admittedly, examined as a witness under Section 161 Criminal Procedure Code



and who has been cited as one of the witnesses for the prosecution, this Court is unable to find any illegality or irregularity on the part of the learned Trial court in such summoning of the petitioner nor could it be said that requiring the petitioner to appear as a witness would be causing him any prejudice.

8. Whether the petitioner was cited as a witness by the complainant or not is hardly of any relevance or bearing particularly when it is noticed that the petitioner was indeed examined by the Investigating Officer under Section 161 Criminal Procedure Code and has been cited as a witness in the charge sheet filed before the Court. Similarly, the observation as made by the learned Trial Court while framing the charges that existence of the agreement was not a matter of dispute cannot be taken decisive on the question as to whether the Trial Court would require the petitioner's evidence in the case before it. It is ultimately for the Trial Court to consider as to what evidence is required by it for arriving at a just decision and for that matter, the power of the Trial Court to summon any relevant person as a witness remains unquestionable. The submissions as made by the petitioner hardly carry any substance; and rather this Court is unable to appreciate if the petitioner could be considered having any legitimate grievance on being summoned as a witness.”

7. In **Namdev v. Prakash Writ Petition No. 101594 of 2018 (GM-CPC)**.. D/d. 09.06.2023, the Karnataka High Court address the same issue and observed that:

“6. The contention of the petitioner that he has filed the affidavit in lieu of examination-in-chief instead of cross-examining PW-1, the defendants have filed the application under Order XVI rule 1 and 2 read with section 151 of CPC seeking prayer to issue summons to Sri T.S. Padekar, Advocate and notary and filing of such application is an attempt to protract the proceedings. The said contention is required to be rejected for the reason that when the defendant has taken specific



plea/defence that the execution of the document in question is for security, I do not find any reason to accept the contention of the petitioner. Hence, it is necessary to summon the advocate notary for the purpose of adjudication of the issue in a suit.”

8. A similar petition was dismissed by this Court in ***Gurdeep Kumaar Chhabra v. Raj Kumar Kukkar 2023(2) RCR(Criminal) 455***, by observing that “6...The Judicial Magistrate Ist Class, Abohar in the present case, found that the evidence of the Notary Public is essential for the just and fair decision of the case and thus, allowed the application under Section 311 of Cr.P.C. filed by the complainant/respondent in the proceedings under Section 138 of the Negotiable Instruments Act, 1881. *This Court is also of the opinion that the said evidence is necessary for the just and fair decision of the case. The impugned order has been correctly passed and there is no illegality or infirmity in the said order so as to interfere with the same.*”

9. Reverting to the case at hand, a perusal of the impugned order reveals that the petitioner was not summoned by the trial Court as a matter of routine, but was sought to be examined for the production of the record pertaining to an affidavit produced on file by the defence. It was also recorded in the impugned order that despite personal service of summons to the petitioner, neither did he appear, nor did he effect production of the required record, constraining the Court to issue bailable warrants to the petitioner for production of the said record, either by appearing in person or through an authorized agent. The reliance on the letter dated 28.01.2006 of the Registrar General, which from its language gives it the colour of a recommendation, is also misplaced and it cannot be used as an estoppel against the summoning of the petitioner.



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10. Learned counsel for the petitioner has failed to point out an illegality or perversity in the impugned order, which was passed in accordance with law, after application of judicial mind, and with proper reasoning.

11. In view of the above, the present petition being devoid of any merit, is hereby dismissed.

21.03.2025

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**(KIRTI SINGH)
JUDGE**

Whether speaking/reasoned? Yes/No
Whether reportable? Yes/No