

2024:PHHC:172882



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

124

CR-6330-2024 (O&M)
Date of decision: 29.10.2024

Poonam and others
...Petitioners

Versus

State of Haryana and another
...Respondents

CORAM: HON'BLE MR. JUSTICE VIKAS SURI

Present: Mr. C.P. Tiwana, Advocate for the petitioners.

VIKAS SURI, J.

1. This is a petition under Article 227 of the Constitution of India for setting aside the order dated 17.07.2024 (Annexure P-6) passed by learned Civil Judge (Senior Division)-cum-CJM, Kaithal, and further for direction to the learned trial Court to summon the witnesses afresh and secure their appearance for examination for proper adjudication of the case.
2. On an advance copy of the petition having been served upon the respondents, Mr. Devyansh, Advocate for Mr. Jagdish Manchanda, Addl. A.G., Haryana, is present in Court and puts in appearance on behalf of the respondents.
3. Briefly stated, the plaintiff/petitioners are the widow and minor children of deceased Rinku son of Roshan Lal, who is alleged to



have unfortunately died on being suddenly hit by a stray bull on 06.03.2021. On completion of the pleadings, the issues were framed vide order dated 13.09.2022 and the plaintiffs' evidence stands closed by Court order on 17.07.2024, impugned herein.

4. Learned counsel for the petitioners has argued that on 12.03.2024, the plaintiff/petitioners had moved an application (Annexure P-2) for summoning two official witnesses and for depositing diet money, which was allowed by the learned trial Court. Accordingly, the assessed diet money was deposited with the Court against receipt dated 13.03.2024 (Annexure P-3). It is further submitted that one of the said witnesses is a police official, who despite being served did not put in appearance and accordingly, vide order dated 10.04.2024, his presence was ordered to be secured through non-bailable warrant for 04.07.2024. On the adjourned hearing, the summons issued to witness Dr. Rajat Pankaj was received back with a request and the non-bailable warrant remained unexecuted. The learned trial Court instead of taking steps to ensure attendance of both the witnesses, ordered issuance of fresh summons to the said witnesses for 17.07.2024, on which date, the impugned order was passed, whereby evidence of the plaintiffs was closed by Court order.

5. The plaintiff/petitioners aggrieved by the aforesaid order, have impugned the same by way of the present petition.

6. Learned counsel for the petitioners has argued that the



impugned order is not sustainable and liable to be set aside on the following grounds:-

- i. That once the process has been issued by the Court for summoning the official witnesses, one being the Medical Officer, Civil Hospital Kaithal along with official record with regard to specified post mortem report and the other being a police official, i.e., MHC Police Station Civil Lines, Kaithal along with DDR register pertaining to GD No.018 dated 07.03.2021, and the same having been duly served, the Court was duty bound to enforce their attendance by coercive method prescribed in law and not issuing summons afresh.
- ii. Non-bailable warrant having been issued against the police official, i.e., Police Station Civil Lines, Kaithal, therefore, no summon was required to be issued again. Rather steps were to be taken to execute the non-bailable warrant already issued.

7. I have heard learned counsel for the parties and with their able assistance, perused the paper book.

8. Admittedly, on an application moved by the plaintiff/petitioners, the following two witnesses were summoned:-

- i. Dr. Rajat Pankaj Saharan M.O. Civil Hospital, Kaithal alongwith Register of PMR No. (Generated by Software): M406001212100082, PMR No. (Given by Doctor): RPS/PMR/20/21 dated 7.3.2021 of deceased Rinku son of Roshan Lal resident of village Santokh Majra tehsil Rajound Distt. Kaithal.
- ii. MHC, P.S. Civil Line, Kaithal alongwith Register of



(DDR) GD No. 018 dated 7.3.2021 lodged by Sunil Kumar son of Roshan Lal r/o Santokh Majra.

9. Undisputedly, vide order dated 10.04.2024, one of the aforesaid witnesses was served whereas the summons issued to the other witness viz. Dr. Rajat Pankaj, was received back unserved. Accordingly, fresh summons were ordered to be issued to Dr. Rajat Pankaj for 04.07.2024 and the attendance of the other witness (police official) was ordered to be secured through non-bailable warrant for the same date. However, on the subsequent hearing, i.e. on 04.07.2024, even though summons to the witness Dr. Rajat Pankaj was received back served with some request and the non-bailable warrant issued to other witness (police official) remained unexecuted, fresh summons were ordered to be issued to both the witnesses for 17.07.2024. The trial Court apparently seems to have overlooked the proceedings recorded on the previous hearing while passing the order dated 04.07.2024 and on the subsequent hearing without even advertent to the report on the said summons, proceeded to pass the impugned order dated 17.07.2024. Perusal of the impugned order shows that the same does not record any observation regarding the service report on the summons issued to the witnesses who were summoned at the instance of the plaintiff/petitioners.

10. Surprisingly, on the non appearance of the witness (police official), the trial Court has straight away ordered to issue non-bailable



warrant. The same is also contrary to the well established procedural law, whereby the attendance of the witness, who fails to appear despite service, is required to be secured first through bailable warrant and, in defiance of the same, then through non-bailable warrant.

11. It is well settled that every party must be afforded a fair opportunity to lead evidence in support of their pleadings. The Courts are always inclined to adjudicate upon the merits of the case after taking evidence, admissible in law.

12. On profound consideration of the peculiar facts and circumstances of the present case in its entirety, I am of the considered opinion that *prima facie* there is irregularity in the procedure adopted by the learned trial Court. In view thereof, the impugned order cannot sustain in law. Due opportunity to lead evidence, after enforcing the attendance of the summoned official witnesses, was required to be afforded to the plaintiff/petitioners. No prejudice would be caused to the respondents in case the dispute between the parties is adjudicated after affording due opportunity to the plaintiff/petitioners to adduce their evidence. The same would also be in the interest of justice.

13. Resultantly, the present revision petition is accepted and the impugned order dated 17.07.2024 (Annexure P-6) is set aside and the trial Court shall proceed from the stage of order dated 10.04.2024 (Annexure P-4).

14. Accordingly, two effective opportunities are granted to the



plaintiff/petitioners to conclude their entire evidence. The plaintiff/petitioners having already sought the assistance of the Court to summon the official witnesses, their attendance along with the relevant summoned record be ensured by the trial Court. Fresh summons may be issued for the said purpose. The trial Court shall ensure due service of the summons so issued through the Process Server of the Court.

15. The revision petition is disposed of in the aforesaid terms.
16. Pending applications, if any, also stand disposed of.

October 29, 2024
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(VIKAS SURI)
JUDGE

Whether speaking/reasoned : Yes / No

Whether Reportable : Yes / No