

IN THE PUNJAB & HARYANA HIGH COURT AT CHANDIGARH

CRM-M-30260-2011

Date of decision : 22.01.2015

Kashmir Singh

... Petitioner

Versus

Harjinder Kaur and others

... Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr.Anil Chawla, Advocate
for the petitioner.

None for respondents No.1 to 5 and 8.

Respondent No.7 since deleted being dead.

REKHA MITTAL, J.

The present petition under Section 482 of the Code of Criminal Procedure lays challenge to order dated 07.06.2011 passed by the Judicial Magistrate, Tarn Taran in criminal complaint titled “*Kashmir Singh Vs. Harjinder Kaur and others*” whereby the pre-charge evidence of the complainant has been closed by order.

Counsel for the petitioner contends that though after appearance of the accused in pursuance of process issued for facing trial for committing fraud and forgery, the case has been adjourned for number of times for examination of witnesses in pre-charge evidence but on several dates, application was filed by one accused or the other seeking exemption from personal appearance. It is further submitted that in case the petitioner is not allowed to examine himself and the official witnesses for whose

summoning he has already deposited diet money, a serious prejudice would be caused to seek adjudication of his claim in regard to culpability of the accused or merits of the controversy. It is further submitted that one opportunity may be allowed to the petitioner to conclude his remaining evidence to be examined at the pre-charge stage.

The respondents failed to appear in the Court and therefore, there is no counter to the submissions made by counsel for the petitioner.

I have heard counsel for the petitioner and perused the records.

The criminal complaint was filed by the petitioner in May 2005 and after concluding evidence during preliminary inquiry, the accused were summoned. After procuring presence of the accused, the case was fixed for pre-charge evidence on 28.03.2008. The case was adjourned on a number of occasions for want of availability of the witnesses of the complainant and on certain dates personal appearance of one accused or the other was exempted. Last opportunity was provided to the complainant to produce the entire pre-charge evidence for 07.06.2011, the date on which it was closed by order of the Court.

The complainant filed applications for depositing diet money to summon some of the official and private witnesses and it appears that those applications were allowed by the trial Magistrate. In none of the jimny orders of the trial Magistrate, there is reference to issuance of summons to the witnesses, who were ordered to be summoned through process of Court on deposit of diet money. No doubt, the petitioner availed number of opportunities for adducing evidence but failed to conclude the same but in view of interest of justice coupled with the factum that the Court did not

issue process for summoning of witnesses for whom diet money was deposited, one opportunity is given to the petitioner to conclude his remaining pre-charge evidence subject to costs of Rs.10,000/- to be deposited with the Legal Services Authority, Tarn Taran. The petitioner shall ensure presence of the remaining witnesses on the date to be fixed by the trial Magistrate.

Disposed of.

(REKHA MITTAL)
JUDGE

January 22, 2015.

DK