

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**CRM-M-26528 of 2014 (O&M)
Date of Decision: 7.5.2015**

Om Parkash

.....Petitioner

Vs.

State of Haryana and others

.....Respondents

CORAM : HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present : Mr. Sandeep Kotla, Advocate
for the petitioner.

Mr. Ashish Yadav, Additional A.G. Haryana.

Mr. Ram Kumar, Advocate
for the private respondents.

1. To be referred to the Reporters or not?
2. Whether the judgment should be reported in the Digest?

RAMESHWAR SINGH MALIK J.

Present petition, at the instance of complainant in FIR No. 160 dated 11.6.2006 under Sections 148/149/323/324/341/506/325 of the Indian Penal Code ('IPC' for short), is directed against the order dated 24.7.2014 (Annexure P-1), passed by the learned Judicial Magistrate 1st Class, Hansi, whereby prosecution evidence was closed by the court order.

Notice of motion was issued and pursuant thereto, reply by

AMIT KUMAR
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I attest to the accuracy and
authenticity of this document

way of affidavit dated 18.11.2014 was filed on behalf of the respondent-State, whereas the private respondent filed their separate reply.

Learned counsel for the petitioner, referring to the relevant zimni orders reproduced in the petition, submits that learned trial court misdirected itself, while passing the impugned order. He further submits that when the prosecution witnesses, who were the official witnesses, were not coming forward for getting their statements recorded, learned trial court, vide order dated 17.7.2014 issued non-bailable warrants against the remaining unexamined PWs. However, prosecution witnesses still did not appear before the learned trial court, on the next date of hearing. He next contended that in such a situation, learned trial court ought to have secured presence of the remaining unexamined PWs, in stead of passing the impugned order. He concluded by submitting that the impugned order has caused serious prejudice to the prosecution case and the petitioner, being complainant, was genuinely feeling aggrieved against it. He prays for allowing the present petition, by setting aside the impugned order.

On the other hand, learned counsel for the State submits that during the trial, one of the official witnesses namely Ram Niwas expired and some of the witnesses were given up as unnecessary. He further submits that the petitioner could have filed an application under Section 311 Cr.P.C., instead of approaching this Court. He concluded by submitting that no order is called for in the present petition.

Learned counsel for the private respondents submits that

present petition, at the hands of the petitioner-complainant, was misconceived and liable to be dismissed. He prays for dismissal of present petition.

Having heard the learned counsel for the parties at considerable length, after careful perusal of the record of case and giving thoughtful consideration to the rival contentions raised, this Court is the considered opinion that in the given fact situation of the present case, instant one has been found to be a fit case, warranting interference at the hands of this Court, while exercising its inherent jurisdiction under Section 482 Cr.P.C. To say so, reasons are more than one, which are being recorded hereinafter.

A combined reading of the zimni orders dated 7.7.2014, 17.7.2014 and the impugned order dated 24.7.2014, passed by the learned trial court, would show that the learned trial court fell into serious error of law, while passing the impugned order.

Zimni order dated 7.7.2014, reads as under:-

“No PW is present, learned APP for the State has given up PW HC Ram Niwas being died, vide her separate recorded statement. Summons issued to PWs EHC Vijay Pal, Naval Singh, Sudhinder Kumar, SI/SHO Sadhu Ram and ASI Ramesh Chander received back unserved. Fresh summons to above named PWs be issued again for 17.7.2014. It shall be the last opportunity. Summons be sent through S.P. Hisar.”

In compliance of the abovesaid order, no PW came present

on the next date of hearing and the learned Magistrate, passed the following order on 17.7.2014:-

“No PW is present. Summons issued to PWs EHC Vijay Pal, HC Naval Singh, ASI Sudhinder Kumar, SI/SHO Sadhu Ram and ASI Ramesh Chander received back unserved. As case in hand pertains to year 2006, therefore, in view of the provisions of Section 87 of Cr.P.C. above named PWs and remaining unexamined PWs if any be served through non-bailable warrants for 24.7.2014.”

Only two PWs came present. These were ASI VijayPal and SI Ramesh Chander. They were examined. However, SI Sudhinder Singh and HC Naval Singh did not come present. Instead of securing presence of the abovesaid unexamined cited witnesses, learned trial court passed the impugned order closing prosecution witness. In such a situation, learned counsel for the petitioner has been found justified in saying that the petitioner was genuinely feeling aggrieved against the impugned order, being the complainant.

In the present case, it prima facie seems that prosecuting agency was proceeding on a casual approach but the learned trial court should not have shown its helplessness, in securing the presence of remaining unexamined prosecution witnesses. Instead of closing the prosecution evidence, learned trial court should have taken coercive steps to secure the presence of unexamined prosecution witnesses. Under these circumstances, it can be safely concluded that the impugned order passed by the learned trial court

is patently illegal and the same cannot be sustained.

Learned trial court was not at the mercy of the prosecuting agency. In case the prosecuting agency was not taking due interest in prosecuting the case, by producing its witnesses in time, the learned trial court could have secured the presence of the unexamined witnesses by taking appropriate steps, including the coercive steps, if so required.

It is equally true that prosecuting agency was under legal obligation and duty bound to produce its witnesses in time, so as to ensure that no undue delay is caused in the trial. Having said that, this Court feels no hesitation to conclude that since the material witnesses namely ASI Sudhinder Kumar and HC Naval Singh could not be examined because of the laxity on the part of prosecution, petitioner was left with no other option except to approach this Court by way of instant petition, which deserves to be allowed.

No other argument was raised.

Considering the peculiar facts and circumstances of the case noted above, coupled with the reasons aforementioned, this Court is of the considered view that since the impugned order suffers from patent illegality, it cannot be sustained. Accordingly, the impugned order dated 24.7.2014 (Annexure P-1) passed by the learned JMIC, Hansi, closing the prosecution evidence, is hereby set aside.

Consequently, the learned trial court is directed to examine all the remaining unexamined witnesses including ASI Sudhinder Kumar and HC Naval Singh. Simultaneously, prosecuting agency,

through the concerned officers of the department, is directed to ensure that no delay takes place at their instance and the unexamined prosecution witnesses are produced, before the learned trial court at the earliest. Since the criminal trial is pending for a considerable long time, learned trial court shall make an endeavour to conclude it as early as possible, however, only after examining the left over prosecution witnesses.

Resultantly, with the abovesaid observations made and directions issued, present petition stands allowed, however, with no order as to costs.

(RAMESHWAR SINGH MALIK)
JUDGE

7.5.2015
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