

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

CRL. MISC. No.M-32122 OF 2013 (O&M)
DATE OF DECISION : 14th MAY, 2015

Raj Singh @ Raja

.... Petitioner

Versus

The State of Haryana & others

.... Respondents

CORAM : HON'BLE MR. JUSTICE SURINDER GUPTA

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Present : Mr. R. N. Lohan, Advocate for the petitioner.

Mr. Baljinder Singh Virk, Deputy Advocate General, Haryana.

Mr. P. K. Chugh, Advocate for respondent No.1.

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SURINDER GUPTA, J. (ORAL)

Heard.

In case bearing FIR No.9 dated 04.02.2004 registered at Police Station Julana, District Jind the police presented challan for offences punishable under Sections 323 and 325 read with Section 34 IPC on 08.04.2004 wherein charge was framed on 28.05.2004. Thereafter the prosecution moved an application under Section 319 Cr.P.C. on which the additional accused were summoned and chargesheeted on 16.07.2008.

Learned counsel for the petitioner argues that on 16.07.2008 the case was adjourned for prosecution evidence for 29.01.2009 on which date one PW was examined and it was adjourned for 27.05.2009. On 27.05.2009 no PW was present and last opportunity was allowed to the

prosecution to produce the entire evidence for 10.06.2009. On 10.06.2009 three PWs were present and examined and last and final opportunity was granted under intimation to Superintendent of Police, Jind for 20.08.2009 on which date the evidence of the prosecution was closed by order. The prosecution also moved an application under Section 311 Cr.P.C. to summon Dr. Subhash Chand, Medical Officer, PGIMS, Rohtak and investigating officer Manphool Singh, Head Constable which was also declined vide order dated 08.09.2009. The petitioner/complainant filed CRM-M No.26379 of 2009 which was allowed to be withdrawn with liberty to file fresh petition challenging the impugned order dated 20.08.2009 and order dated 08.09.2009. The petitioner filed another CRM-M No.4553 of 2012 which was allowed to be withdrawn with liberty to avail appropriate/alternate remedy under law. Thereafter the petitioner filed a revision petition before the Sessions Judge, Jind, which was dismissed, mainly on the ground of delay despite the fact that the delay in filing the revision petition was condoned.

Learned counsel for the respondent has argued that the prosecution was allowed sufficient opportunity to produce evidence. For the lapses of the prosecution the respondent who are facing the trial for the last eleven years, should not be made to suffer. The Court had issued the summon and the duty was of the prosecution to get the service effected. Intimation of last opportunity was given to the Superintendent of Police, Jind but no attempt was made to produce the entire evidence.

On going through the paper book and the facts of the case, it transpires that Dr. Subhash Chand is a material witness in this case. No doubt there is delay and lapses on the part of the prosecution but most of the delay has been caused due to the legal tangle and the pendency of the petitions filed by the petitioner. After the framing of charges in 2008 opportunities were allowed to prosecution to produce evidence but it could not conclude its case. The complainant however cannot be made to suffer for the lapse on the part of the prosecution.

Keeping in view the above facts, this petition is allowed. The prosecution is allowed to produce Dr. Subhash Chand, Medical Officer, PGIMS, Rohtak and Manphool Singh, Head Constable, Investigating Officer of the case. Keeping in view the fact that this case pertains to the year 2004, the trial Court will provide only two opportunities to the prosecution to produce both the witnesses at its own responsibility. Prosecution will take dasti summons of the witnesses. In the event of witnesses not being produced, no further adjournment shall be allowed to the prosecution and the case be disposed of before 31.08.2015. The parties are directed to appear before the trial Court on 29.05.2015 on which date the trial Court will take up the case by pre-poning the date already fixed in the case.

14th May, 2015
'raj'

(SURINDER GUPTA)
JUDGE