

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM No.M-29602 of 2015
Date of Decision:- 22.09.2015

Dharambir and others

....Petitioners

Versus

State of Haryana and another

....Respondents

CORAM: HON'BLE MR. JUSTICE SHEKHER DHAWAN

Present: Mr. R.S. Kundu, Advocate, for the petitioners.

SHEKHER DHAWAN, J.

Present petition under Section 482 Cr.P.C. for quashing/setting aside of the judgment dated 21.07.2015 passed by Additional Sessions Judge, Hisar in Criminal Appeal No.6 of 2015 (Annexure P-1) and the order dated 21.07.2015 allowing the additional evidence under Section 391 Cr.P.C. (Annexure P-2).

2. Relevant facts of the case that respondent No.2-Balraj filed an appeal under Section 372 Cr.P.C. along with an application under Section 391 Cr.P.C. that the trial Court did not provide sufficient opportunities to lead evidence, which resulted into miscarriage of justice, as PW2 Laxmi Devi did not appear for cross-examination despite various opportunities. Investigating Officer and medical evidence was very much essential. Learned Additional Sessions Judge remanded the case to examine the remaining witnesses and the said order deserve to be set aside.

3. Learned counsel for the petitioners submitted that additional evidence has been allowed by learned Appellate Court, whereas prosecution evidence was closed by Court order. There was absolutely no reason or ground available with learned Additional Sessions Judge to pass order dated 08.12.2014. In support of his arguments, learned counsel for petitioners has placed reliance upon judgment of this Court in case **Mahla Ram Vs. The State of Haryana, 1978 C.L.R., 239**, wherein it was observed that the discretion vested in the Court should not be exercised arbitrarily but only when the interest of justice demands such a procedure. The Court is not authorized to use this power for the purpose of filling a gap in the prosecution case. On the same point, reliance has been placed upon judgments of this Court in cases **Sukhd V. Singh Vs. The State of Haryana, 1978, C.L.R., 33** and **Piara Singh and others Vs. The State of Punjab, 1978 C.L.R. 127**.

4. Having considered the submissions made by learned counsel for the petitioners and the view taken by this Court in above referred judgments, this Court is of the considered view that the facts of the cases are entirely distinguishable. In the present case, application under Section 391 Cr.P.C. was allowed by Additional Sessions Judge, while considering the complete facts before the Court and the way the learned trial Magistrate had closed the prosecution evidence by Court order despite the fact that the prosecution witnesses were not appearing during the trial regularly. For ready reference, the factual position observed by learned Additional Sessions Judge, is being reproduced as under: -

“In the present case, the case was taken up for prosecution evidence for the first time on 1.8.2011. On that day no PW was present and case was

adjourned to 24.08.2011. Bailable warrants of PW Laxmi, Balraj and Shalinder were issued. On 24.08.2011 also no PW was present and the case was adjourned to 26.09.2011 for consideration on application for permanent exemption of accused Bitu and also for prosecution evidence. On 26.09.2011 one PW namely Shalinder was present and examined in part and further examination of this witness was deferred as court time was over and the case was posted for 14.11.2011. On 14.11.2011 PW Shalinder was present, but was not examined as the witness requested for adjournment on the ground of illness and the case was adjourned to 2.3.2012 for cross-examination of PW Salinder and for remaining evidence. Prior to that date file was taken up on 20.1.2012, upon an application filed by the prosecution for taking original reports and films of x-ray and C.T. scan examination and bed head tickets, for which notice to accused was issued for 25.01.2012. On 25.01.2012 the application of the Investigating Agency was allowed. On 2.3.2012 no PW was present and PWs Laxmi Devi and Salinder were ordered to be summoned through bailable warrants for 26.05.2012 and fresh summons to remaining unexamined witnesses were ordered to be issued. On 26.05.2012 cross-examination of PW Shalinder was completed. PW Balraj and Laxmi Devi did not appear despite service and their presence was ordered to be secured through bailable warrants and remaining unexamined witnesses were ordered to be summoned for 29.08.2012. On 29.08.2012 three witnesses were present, out of which examination of one witness was completed. Cross-examination of PW2 Laxmi Devi was deferred on the request of counsel for the accused. Statement of Bijender could not be recorded in view of request made by defence counsel and the case was adjourned to 20.11.2012. On 20.11.2012 PWs Balraj and Laxmi Devi were present, but could not be examined on the request of defence counsel as main counsel for accused was not available and the case was adjourned for 3.12.2012. On that date one PW was present and examined. ASI Balbir did not appear despite service and he was ordered to be summoned through bailable warrants and the case was adjourned to 4.3.2013. On 4.3.2013 one PW was present and examined and the case was adjourned to 30.05.2013 for remaining evidence. On 30.05.2013 also one PW was present and examined and another PW Dr. Kanta Goel was present, but could not be examined for want of original record, which was taken away for the re-medical examination. Notice to the Investigating Officer was also issued to produce the record for 14.08.2013. From 14.08.2013 to 27.10.2014, i.e. for a period of more than one year, the case remained pending for production of record and ultimately the record was produced and the case was adjourned to

10.11.2014 for prosecution evidence and that opportunity was ordered to be treated as last opportunity. On that date one PW was present and examined and the remaining unexamined witnesses were ordered to be summoned for 17.11.2014. Last opportunity was ordered to remain intact for prosecution evidence. On 17.11.2014 no PW was present and the prosecution evidence was closed on the ground that the prosecution has availed sufficient effective opportunities, including last opportunity, to adduce evidence and that case is pending since 2009 and is listed for "Action Plan" and no more adjournment is justified.

6. *Perusal of the case file reveals that cross-examination of PW2 Laxmi Devi was deferred on the request of defence counsel on 29.08.2012 and on 20.11.2012 also she was present and was bound down for 3.12.2012. On 3.12.2012 PW Laxmi Devi was not present, but instead of issuing bailable warrants against her, fresh summon to all unexamined witnesses were ordered to be issued for 4.3.2013, but no notice was issued to PW Laxmi Devi for that date. Subsequently, also she was not summoned. For 17.11.2014, the date on which prosecution evidence was closed, no notice to prosecution witnesses was issued by the Court and the court without caring for said fact closed the evidence. Perusal of the file further reveals that no notice to the prosecution witnesses was issued after 30.05.2013. In this manner the prosecution in general and victim/injured in particular, has suffered a lot due to the non issuance of the notices to the prosecution witnesses by the court officials."*

5. In view of above observations recorded by learned Additional Sessions Judge, completely justifies interference, by way of allowing additional evidence under Section 391 Cr.P.C. There is absolutely no illegality, calling for interference, by way of present petition under Section 482 Cr.P.C. and the present petition being devoid of any merit stands dismissed.

September 22, 2015
naresh.k

(**SHEKHER DHAWAN**)
JUDGE