

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-30588 of 2015 (O&M)
Date of Decision: 18.9.2015

Manjeet Singh

.....Petitioner

Vs.

Jitender and others

.....Respondents

CORAM : HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present : Mr. Deepak Saini, Advocate
for the petitioner.

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

RAMESHWAR SINGH MALIK J.

This is yet another example of blatant abuse of process of court, at the hands of the petitioner.

Petitioner, by way of instant petition under Section 482 of the Code of Criminal Procedure (' Cr.P.C.' for short), seeks quashing of the impugned order dated 2.9.2015 (Annexure P-6), whereby learned trial court closed the prosecution evidence for the third time and that too, in consonance with the order passed by the learned revisional court.

Briefly put, facts of the case which are necessary for the disposal of the present case, are that FIR No.2 dated 4.1.2009 under Sections 148/149/323/325/285/307 of the Indian Penal Code ('IPC' for short), was registered at Police Station Sadar Panipat, against the

respondent-accused. However, on the basis of medical opinion given by the doctor on 28.1.2009 (Annexure P-1), to the effect that no injury suffered by the petitioner was found dangerous to life, offence under Section 307 IPC was deleted. Petitioner claims to have suffered 22 injuries whereas as per MLR, only 8 injuries were found on the body of the petitioner. After conclusion of the investigation, final report under Section 173 (2) Cr.P.C. was presented by the investigating agency to the learned court of competent jurisdiction on 15.7.2009. Petitioner claims to have remained under medical treatment for about 2 years saying that he was not in a position to appear as witness before the Court, however, no such medical report has been placed on record of this case.

Having found a prima facie case, learned Judicial Magistrate 1st Class, vide his order dated 14.9.2009, framed charge against the accused-respondent for the offences punishable under Sections 323/325 read with Section 34 IPC, which reads as under:-

“Arguments on charge heard. A prima facie case was for the commission of offence under Section 323/325 read with Section 34 of IPC is made out against the accused. Charge framed accordingly to which the accused pleaded not guilty and claimed trial. Now the case is adjourned to 8.11.2010 for prosecution evidence, PWs be summoned for that date.

Sd/-
JMJC, PNP
14/9/2009

After granting more than 12 effective opportunities over a period of more than 5 years, learned trial court closed the evidence vide order dated 19.11.2014. Prosecution had examined as many as 7 PWs by that time. The prosecuting agency moved an application under Section 311 Cr.P.C. for summoning 4 more PWs and the said application was allowed by the learned trial court, vide order dated 20.11.2014 and relevant part thereof, reads as under:-

“.....I have heard learned counsel for the parties and have gone through the entire record of the case. Several effective opportunities have been granted to conclude the prosecution. Even coercive steps have been taken by the court by issuance of bailable warrants or non bailable warrants. Despite issuance of the same, the said witnesses did not appear before the court, however in view of the no objection and in the interest of justice one last and final opportunity is granted to conclude prosecution evidence. It is clear, no further opportunity to conclude prosecution evidence shall be granted. Accordingly, PW Smt. Shamo Devi, I Noorder, Dr. Sanjay Aggarwal, Dr. Meera, be summoned through bailable warrants in the sum of Rs. 5,000/- each, with one surety in the like amount on date fixed. It shall be last and final opportunity, failing which evidence shall be deemed to be closed by court orders. Now to come up on 4.12.2014.”

In compliance of the abovesaid order dated 20.11.2014 passed by the learned trial court, only 2 PWs came present and were examined. Learned trial court again made it clear to the prosecution while adjourning the case to 15.12.2014, that this would be the last opportunity to conclude the entire prosecution evidence in compliance of the order dated 20.11.2014.

On the next date of hearing, i.e. 15.12.2014, no PW came present and the learned trial court was left with no other option, except to conclude the prosecution evidence by court order which reads as under:-

Perusal of the record shows that vide order dated 19.11.2014 prosecution evidence was closed by court's order and the case was fixed for recording of statement under Section 311 Cr.P.C. for 20.11.2014. Subsequently, on 20.11.2014 an application under Section 311 Cr.P.C. for re-summoning PWs Shamo Devi, Noordin, Dr. Sanjy Aggarwal and Dr. Meera was moved. The said application was allowed giving one last and final opportunity to produce the said PWs. On the next date of hearing, two PWS Manjit Singh and Shamo Devi were examined. One more opportunity was granted to conclude the prosecution evidence on 15.12.2014. Today, no PW is present. This Court is of opinion ample coercive steps have been taken by the court to secure the presence of the said

witnesses by issuing summons and bailable warrants. Speedy trial is also a fundamental right of the accused. No further adjournment for the same purpose is made out. Accordingly, prosecution evidence stands closed by the court orders. Now to come upon for statement of accused under Section 313 Cr.P.c. on 20.12.2014.

The abovesaid order was challenged by the prosecution, through the petitioner, before the learned Sessions Judge, vide a criminal revision Annexure P-2. The said criminal revision was allowed by the learned Additional Sessions Judge, vide order dated 28.7.2015 (Annexure P-3), granting only one opportunity to the prosecution for examining its witnesses, directing the parties to appear before the learned trial court on 5.8.2015 and relevant part of the order is as under:-

“....Learned trial court is directed to grant only one opportunity to the prosecution for examination of witnesses sought to be summoned. Parties are directed to appear before the learned Trial Court on 5.8.2015 for further proceedings....”

In compliance of the abovesaid order dated 28.7.2015, parties appeared before the learned trial court on 5.8.2015 and the case was adjourned for prosecution evidence to 2.9.2015. Again, no PW came present and the learned trial court passed the impugned order dated 2.9.2015 (Annexure P-6), closing the prosecution evidence for the third time and the same reads as under:-

“Today the case was fixed for PWs. No PW present. Vide order dated 28.7.2015 passed by Sh. Devender Singh, Additional Sessions Judge, Panipat only one opportunity was granted to the prosecution to produce its evidence, but prosecution has failed to produce its evidence. Hence, in view of the order dated 28.7.2015 passed by Sh. Devender Singh, Additional Sessions Judge, prosecution evidence is hereby closed. Now to come up on 8.9.2015 for recording the statements of accused under Section 313 Cr.P.C.”

When the case came for up for hearing on 9.9.2015, it was adjourned to 18.9.2015 on the request of learned counsel for the petitioner. On 17.9.2015, learned counsel for the petitioner mentioned before this Court that he has moved CRM Nos. 30911 and 30912 of 2015 for placing on record zimni orders as well as for exemption from filing certified copies thereof and prayed that said applications may be ordered to be listed with the main case on 18.9.2015. Request made by learned counsel for the petitioner was allowed, directing the Registry to put up the abovesaid criminal miscellaneous applications with the main case on 18.9.2015. Accordingly, the abovesaid applications are allowed. Annexure P-7 is permitted to be placed on record and exemption sought is also granted.

Learned counsel for the petitioner submits that petitioner deserves to be granted one more opportunity, so as to enable the

prosecution to conclude its remaining evidence. He further submits that petitioner remained admitted in the hospital for a long period of two years on account of his medical treatment because of which, he could not pursue his case properly. He submits that learned trial court ought to have taken further coercive steps for securing the presence of remaining 2 PWs, but since learned trial court has failed to do so, the impugned order has resulted in miscarriage of justice.

He would next contend that it was a clear cut case of offence under Section 307 IPC and for the said purpose, it was necessary to examine remaining two PWs, i.e. Doctors. He concluded by submitting that petitioner suffered as many as 22 injuries on his person. The bonafide apprehension of the petitioner is that if the remaining 2 PWs-doctors are not permitted to be examined, the prosecution will not be in a position to make out a case under Section 307 IPC against the accused-respondents. In support of his contentions, learned counsel for the petitioner places reliance on a judgment of the Hon'ble Supreme Court in **Rajaram Prasad Yadav Vs. State of Bihar and another, 2013 (3) RCR (criminal) 726**. He prays for allowing the present petition.

Having heard the learned counsel for the petitioner at considerable length, after careful perusal of record of the case and giving thoughtful consideration to the arguments advanced, this Court is of the considered opinion that keeping in the peculiar facts and circumstances of the case, noticed hereinabove, instant one has not been found to be a fit case, warranting interference at the hands of the 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 bare perusal of the abovesaid zimni orders as well as the impugned order would leave no room for doubt that petitioner is trying to misuse the process of law from a long time. Firstly, he claimed to have suffered as many as 22 injuries and this claim of the petitioner has been found to be factually incorrect, as per the abovesaid MLR. In fact, as opined by the doctor in the abovesaid MLR, petitioner was found to have suffered only 8 injuries on his person. Although initially, Section 307 IPC was also there in the FIR, yet the investigating agency was fully justified in deleting the said offence, i.e. under Section 307 IPC, on the basis of opinion of doctor, to the effect that none of injuries was found dangerous to life.

Secondly, when the challan was presented on 15.7.2009 after deletion of the offence under Section 307 IPC, petitioner conveniently accepted the same. Neither he filed any protest petition, nor he sought any further investigation by moving appropriate application before the learned trial court. In this regard, no reasons are forthcoming on behalf of the petitioner.

Thirdly, when the charge was framed only for the offences under Sections 323/325 read with Section 34 IPC, petitioner again did nothing. He did not challenge said order. Thereafter, prosecution evidence had been going on for the last more than five years, when it came to be closed for the third time on 19.11.2014. However, vide order dated 20.11.2014, learned trial court accepted the application of the prosecution under Section 311 Cr.P.C. and granted one last

and final opportunity to conclude the entire prosecution evidence. Prosecution examined as many as 2 PWs on 4.12.2014 and thereafter, although prosecution was not entitled, yet another opportunity was granted to the prosecution to conclude its evidence, while adjourning the case for 15.12.2014.

Similarly, on 15.12.2014, when no PW came present, learned trial court was left with no other option except to close the prosecution evidence for the second time, vide order dated 15.12.2014. Against the abovesaid order dated 15.12.2014, prosecution, through the petitioner, filed a revision petition which was allowed by the learned Additional Sessions Judge, Panipat, granting yet another but last opportunity to the prosecution for examining its witnesses, vide order dated 28.7.2015 (Annexure P-3).

In compliance of the abovesaid order, parties appeared before the learned trial court on 5.8.2015 and the case was adjourned to 2.9.2015, again making it clear the this would be the last and final opportunity for the prosecution to conclude its evidence. However, prosecution again failed to produce its witnesses on 2.9.2015 also. This time, petitioner did not challenge the impugned order dated 2.9.2015 before the learned Sessions Judge, as he did earlier. Having said that, this Court feels no hesitation to conclude that learned trial court committed no error of law, while passing the impugned order and the same deserves to be upheld.

During the course of hearing, when a pointed question was put to the learned counsel for the petitioner as to why the petitioner did not avail his equally efficacious alternative remedy, which was

available to him before the learned Sessions Judge, he had no answer and rightly so, it being a matter of record. In fact, reason is obvious. Petitioner was fully aware that the learned Additional Sessions Judge, vide order dated 28.7.2015, granted one last and final opportunity to the prosecution to conclude its evidence and had he again approached the learned Sessions Judge, he would have been confronted with that fact situation borne out from the judicial record.

While avoiding the alternative remedy before the learned Sessions Judge, petitioner is trying to play smart by invoking the inherent jurisdiction of this Court under Section 482 Cr.P.C. In such a situation, it can be safely concluded that petitioner is not entitled to invoke the inherent jurisdiction of this Court and the impugned order passed by the learned trial court deserves to be upheld, for this reason also.

Coming to the judgment relied upon by the learned counsel for the petitioner, there is no doubt about the law laid down therein. However, on a careful perusal of the cited judgment, the same has not been found to be of any help to the petitioner, being distinguishable on facts. Further, it is the settled principle of law that peculiar facts of each case are to be examined, considered and appreciated first, before applying any codified or judgemade law thereto. Sometimes, difference of one circumstance or additional fact can make the world of difference, as held by the Hon'ble Supreme Court in **Padmausundra Rao and another Vs. State of Tamil Nadu and others, 2002 (3) SCC 533.**

So far as powers of the Court under Section 311 Cr.P.C. are concerned, no doubt the power is discretionary and wide enough, but is equally true that the said discretionary powers must be exercised with care, caution and with circumspection. Additional evidence sought to be produced must not be allowed to be produced, if the same is going to change the nature of the case against any of the parties. Although the court should always be magnanimous for permitting either of the parties to rectify its bonafide mistake, yet it is duty bound to be cautious because under the garb of its magnanimity, one party cannot be permitted to cause serious prejudice to the other side.

Exactly this is what has been sought to be done by the petitioner. It is so said, because offence under Section 307 IPC had been deleted during the investigation itself. It is not in dispute that that offence under Section 307 IPC does not form part of final report under Section 173 (2) Cr.P.C.. However, petitioner is still bent upon to make out case against the accused under Section 307 IPC, by seeking permission to produce additional evidence, which has been rightly declined to him, by way of the impugned order, therefore, the impugned order deserves to be upheld, for this reason as well.

The abovesaid view taken by this Court also finds support from the judgments of the Hon'ble Supreme Court and different High Courts, including this Court in:-

1. Vijay Kumar Vs. State of U.P. and another, 2011 (8) SCC 136 (SC)
2. Mir Mohd. Omar Vs. State of West Bengal, 1989 (2) RCR (criminal) 346 (SC)

3. Iddar and others Vs. Aabida and others, 2007 (3) RCR (criminal) 909 (SC)
4. Natasha Singh Vs. Central Bureau of Investigation (State), 2013 (5) SCC 741 (SC)
5. Mannan S.K. And others Vs. State of West Bengal and another, 2014 (4) RCR (criminal) 617 (SC)
6. Himanshu Singh Sabharwal Vs. State of M.P. and others 2008 (2) RCR (criminal) 267 (SC)
7. Godrej Pacific Tech. Ltd. Vs. Computer Joint India Ltd. 2008 (30 RCR (Criminal) 897 (SC)
8. U.T. of Dadra & Haveli and Anr. Vs. Fatehsing Mohansinh Chauahan, 2006 (4) RCR (criminal) 113 (SC)
9. Mohanlal Shamji Soni Vs. Union of India and another, 1991 (3) RCR (criminal) 182 (SC)
10. Rajendra Prasad Vs. The Narcotic Cell through its Officer-in-charge, Delhi, 1999 (3) RCR (criminal) 440 (SC)
11. Nirmal Singh Vs. State of Punjab 2012 (4) LH 3214 (P&H)
12. Harnam Singh Vs. M/s Bhushan Metalics Ltd. 2007 (1) RCR (criminal) 992 (P&H)
13. Dinesh and others Vs. State of Haryana and others, 2008 (1) RCR (criminal) 128 (P&H)
14. Hari Singh Vs. State of Haryana 2002 (2) RCR (criminal) 316 (P&H)
15. Jagseer Singh @ Sonu @ Joga @ Davginder Singh Vs. State of Punjab 2012 (2) RCR (criminal) 56 (P&H)
16. Jai Singh Vs. Soma @ Soma Nath and others 2006 (4) RCR (criminal) 547 (P&H)
17. Gian Parkash Vs. The State of Haryana and another (CRR 817-1979) (P&H)
18. Sohan Singh Vs. State of Punjab, 1996 (3) RCR (criminal) 429 (P&H)
19. Baljit and others Vs. State of Haryana and another, 2009 (2) RCR (criminal) 178 (P&H)
20. Khushwinder Singh and Anr. Vs. State of Punjab 2007 (1) RCR (criminal) 531. (P&H)
21. Surendra Kumar Vs. State of Rajasthan 2002 (2) RLR 695

(Rajasthan High Court)

22. R.N.Kakkar Vs. Hanif Gafoor Naviwala and others, 1996 CRILJ 365 (Bombay High Court)

23. Vinod Kumr Singh Vs. State of U.P. 2012 (3) CCR 95 (Allahabad High Court)

24. C.P.Sahu and others Vs. State of M.P., 2005 (4) RCR (criminal) 197 (M.P. High Court)

In Nirmal Singh's case (supra), which is very close to the facts of the present case, this Court, in para 5 of the judgment, held as under:-

“In this case, the occurrence took place in the year 2005. Numerous opportunities were afforded to the prosecution to lead the evidence but it could not complete the same, therefore, the learned trial court afforded last opportunity to the prosecution to complete its entire evidence but still the prosecution failed to complete the same. Even after availing of the special last opportunity, the prosecution could not complete its entire evidence, therefore, vide order dated 22.08.2012, the learned trial court closed its evidence by court order. The petitioner, who is father of the complainant, filed an application under Section 311 of the Code of Criminal Procedure for leading additional evidence. Since the prosecution had already availed numerous opportunities for concluding its evidence, therefore, the learned trial court had rightly rejected the prayer of the petitioner to allow him to lead additional evidence.

In the present case, as noticed hereinabove, learned trial court was forced by the prosecution, to close its evidence for the third time. Prosecution, at the instance of the petitioner, is causing serious

prejudice to the valuable right of the accused-respondent, while not allowing the trial to conclude, despite expiry of a long period of more than 6 ½ years. In fact, no reason, much less cogent or justified reasons are forthcoming on behalf of the petitioner and the criminal trial is being delayed, just for the sake of delaying it which is not permissible in law.

Similarly, although powers of this Court under Section 482 Cr.P.C. are wide enough, yet it is equally true that said powers are to be exercised sparingly and with circumspection, with a view to prevent abuse of process of law. In this regard, reference can be made to the law laid down by Hon'ble Supreme Court in its two relevant judgments in State of Punjab Vs. Davinder Pal Singh Bhullar and others, 2011 (14) SCC 770 and Mohit alias Sonu and another Vs. State of U.P. and another, 2013 (7) SCC 789.

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 present petition is misconceived, bereft of merit and without any substance. Thus, it must fail. No case for bail pending trial has been made out.

Resultantly, with the abovesaid observations made, present petition stands dismissed, however, with no order as to costs.

(RAMESHWAR SINGH MALIK)
JUDGE

18.9.2015
Ak Sharma