

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Crl. Misc. No. M-34035 of 2013

Date of decision: April 30, 2015

Balldhir Singh

.. Petitioner

Vs.

State of Haryana and another

.. Respondents

Coram: Hon'ble Mr. Justice Surinder Gupta

Present: Mr. Ashit Malik, Advocate
for the petitioner.
Mr. Baljinder Singh Virk, DAG, Haryana.
Mr. Arvind Bansal, Advocate
for respondent No.2.

Surinder Gupta, J

Heard.

Petitioner challenged the order dated 18.9.2013 passed by Additional Chief Judicial Magistrate, Kaithal in case bearing No.48 of 2013, titled as State vs. Salinder Kumar and others, whereby the prosecution was allowed to examine Mr.Harsh Wardhan, Senior Scientific Officer (Documents), to prove his report Ex.PN, which was earlier tendered in evidence by the Additional Public Prosecutor vide his statement dated 19.2.2011. Notice of motion was issued only to examine the factum of delay in allowing the prosecution to examine the witness.

Learned counsel for petitioner has argued that the report of the expert was tendered in evidence in February, 2011 and at that time objection was raised about its admissibility. No application was moved thereafter by the prosecution till 2013 when the instant application was filed. Prior to this application, two applications had earlier been filed under Section 311 Cr.P.C. wherein no request to examine this witness was made.

On perusal of paper book, it is apparent that learned Additional Public Prosecutor committed a lapse while tendering the report without examining the expert which was not *per-se* admissible under Section 293 Cr.P.C. The delay fact is also there particularly when the defence has taken objection with regard to admissibility of the report.

The question which arises for consideration in this case is whether the conduct of Additional Public Prosecutor can debar the prosecution to examine the material witness?

This fact is not disputed during the course of arguments that evidence allowed by the court is a material piece of evidence. Learned Magistrate has also taken note of this fact and has observed that the statement of Mr. Harsh Wardhan is a material piece of evidence. While considering the delay on the part of the prosecution, the court very cautiously burdened it with costs of ₹2500/-.

Keeping the above facts in view, delay is not fatal to debar the prosecution to examine a material prosecution witness and I find no legal infirmity in the impugned order on this score.

Learned counsel for petitioner has also raised the argument that the application was moved by the a person who was merely a witness, as such, it was not maintainable.

This fact was also considered by the trial court while observing that the examination of this witness is essential for just decision of the case and the court on its own motion or being apprised by any person can summon a material witness.

Mr. Harsh Wardhan was cited as witness in the list of witnesses and his report was produced along with the challan. The mere fact that he was given up by the Additional Public Prosecutor under some wrong impression and due to inadvertence is no ground to deny the opportunity to the prosecution to examine this witness. The order suffers from no legal and factual infirmity calling for interference by this Court. This petition is devoid of any merits.

Dismissed.

April 30, 2015
deepak

(Surinder Gupta)
Judge