

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

CRM-M No.31690 of 2014

Date of Decision: March 26, 2015.

Surinder Kumar

....Petitioner.

VERSUS

U.T. Chandigarh and another

....Respondents.

CORAM: HON'BLE MRS. JUSTICE SNEH PRASHAR.

1. Whether the judgment should be reported in the digest? Yes/No
2. Whether to be referred to the Reporter or not? Yes/No

Present: Mr. Rajiv Kataria, Advocate
for the petitioner.

Mr. Amandeep Singh, Public Prosecutor
for U.T., Chandigarh.

Mr. Kanwaljit Singh, Sr. Advocate with
Mr. Amandeep Singh, Advocate
for respondent no.2.

SNEH PRASHAR, J.

This was a petition under Section 482 of the Code of Criminal Procedure (in short, "Cr.P.C.") for allowing the petitioner-complainant/prosecution to produce evidence that was closed by the order dated 07.08.2014 passed by Judicial Magistrate Ist Class, Chandigarh in case First

Information Report No.262 dated 05.12.2006 under Sections 420, 467, 468, 471, 406 and 120-B of the Indian Penal Code (in short, "I.P.C.") registered at Police Station Industrial Area, Chandigarh.

2. The submissions made by Mr. Rajiv Kataria, learned counsel representing the petitioner, Mr. Amandeep Singh, Public Prosecutor for U.T., Chandigarh and Mr. Kanwaljit Singh, learned senior counsel representing respondent no.2 have been heard.

3. It was submitted by the petitioner-complainant that on the basis of the final report filed by the prosecution charge sheet was served on the accused on 11.10.2010. The charge happened to be defective being different from the facts on file, therefore, on an application filed by him under Section 216 Cr.P.C. on 19.12.2012, the charge was formally amended by the trial court in the middle of the year 2013. Practically the trial started after the amendment of the charge in May, 2013. Thereafter, an application under Section 173(8) Cr.P.C. for further investigation of case was filed by him on 21.08.2013 which was decided on 31.05.2014 by learned Magistrate. Even when the application was pending, statements of witnesses of the prosecution were recorded. Out of 25 witnesses, eight witnesses had been recorded and ultimately on 07.08.2014 the evidence of the prosecution was closed by way of court order.

4. The order dated 07.08.2014 was challenged by the petitioner on the ground that it was passed ignoring the fact that number of material witnesses of the prosecution had not been examined and no attempt had been made to even get him served, being the complainant, so that he could

appear in the witness box. It was also pointed out that in the impugned order, it was mentioned that the charge was framed on 11.10.2010 whereas the amended charge sheet was served in May, 2013. More so, the evidence could be closed in case the witnesses had been served and despite last opportunity given they had not appeared for their statements.

5. Learned counsel for the petitioner-complainant submitted that serious prejudice shall be caused to the complainant in case the witnesses of the prosecution remaining to be examined are not allowed to appear in the witness box.

6. The petition was strongly contested by respondent no.2 Rajiv Chanana. He filed a written reply and annexed with the same all the orders passed by learned trial court during trial and pleaded that as many as 15 opportunities were availed by the prosecution for examining its witnesses before on account of non appearance of the witnesses the evidence was closed by court order. Learned counsel for the respondents submitted that the petitioner-complainant was being represented by a counsel on ever date of hearing yet despite last opportunity given to him, he of his own opted not to appear.

7. Having considered the arguments of learned counsel for the parties, I find that the impugned order dated 07.08.2014 passed by learned Magistrate suffers from certain factual errors. Admittedly, the first charge sheet was served on the accused (respondent no.2) on 11.02.2010. Subsequently, in May, 2013, the charge sheet was amended on an application given by the complainant. Completely omitting the said fact,

learned trial court recorded in the impugned order that the charge in the instant case was framed on 11.02.2010 which was not correct. Secondly, after the amended charge sheet was served, almost one year and three months had passed but learned trial court recorded in the order that after the charges had been framed, approximately four years had passed. Also the order is silent regarding the number/names of the witnesses served on 07.08.2014. The order reflects that one witness was present and his cross-examination was recorded. Finding that no other witness was present and as it was last opportunity accorded, the evidence of the prosecution was closed by court order.

8. The prosecution did not challenge the said order and it is the complainant who has filed the instant petition. As pointed out by learned counsel for respondent no.2, the complainant had filed an application before learned trial court under Section 311 Cr.P.C. for his examination but that was dismissed. Perusal of the orders of learned trial court reveals that in none of the order it was mentioned that summons on the complainant for appearing as witness had been served but he was not present. He was being represented by a counsel, yet summons to him alongwith other witnesses should have been issued for his examination. At least an order directing the counsel to produce the complainant in person for his statement could have been passed.

In view of said facts and circumstances and the impugned order being not factually correct, in my considered opinion and in the interest of justice the complainant deserves one opportunity to appear so that his

statement can be recorded. This court is conscious of the fact that the case is very old and the prosecution has already availed adequate opportunities but had failed to produce its witnesses, however, it will not be judicious to abruptly end the trial in haste.

In view of the matter, the petition is allowed. Only one opportunity is given to the petitioner-complainant for the limited purpose of recording his statement, subject to his depositing costs of Rs.10,000/- with Legal Services Authority. The case is stated to be fixed before learned trial court on 24.04.2015. This order will be a notice to the complainant through his counsel to appear on 24.04.2015 before learned trial court for recording his statement. In case, for any reason unforeseen the learned trial court is not able to record the statement of the complainant, a date within a period of ten days from 24.04.2015 be fixed and the statement of complainant be recorded.

(SNEH PRASHAR)
JUDGE

March 26, 2015
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