

In the High Court of Punjab and Haryana at Chandigarh

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CRM-M-36840-2011

Date of decision: 20.7.2015

HARDIAL SINGH

.....Petitioner

Versus

STATE OF PUNJAB AND ORS.

.....Respondents

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. Harsh Bungar, Advocate,
for the petitioner.

Mr.Varun Sharma, AAG, Punjab.

Mr.Ramandeep Singh, Advocate,
for respondents No.2 and 3.

Mr.H.K. Aurora, Advocate,
for respondent No.4.

RAJ MOHAN SINGH, J.

By way of this petition, petitioner seeks quashing of order dated 7.10.2011 passed by Judicial Magistrate, Ist Class, Jalandhar (Annexure P-3) as well as order dated 19.11.2011, passed by Additional Sessions Judge, Jalandhar (Annexure P-5).

Vide order dated 7.10.2011, trial Court, closed the order of prosecution by its order on the ground that last opportunity was granted to the prosecution on 26.8.2011 and despite that prosecution had failed to conclude its evidence. It

was also observed that the case in hand was a targetted case for Samadhan-2011 and, therefore, further adjournment was not thought appropriate by the trial Court. Consequently, the prosecution evidence was closed by order of the Court.

Against the aforesaid order, petitioner filed CRM-M No. 32396 of 2011 in this Court. By order dated 3.11.2011, petitioner was relegated to the remedy of revision along with application for condonation of delay. Petition was ultimately dismissed as withdrawn with liberty to file revision before the Court of Sessions. Thereafter, revision was filed before Additional Sessions Judge, Jalandhar. In the concluding part of the order, Additional Sessions Judge, Jalandhar has observed that the Court did not find any ground to admit the revision petition and the revision petition was dismissed in *limine*. However, in the preceding paras, factum of filing of application under Section 311 Cr.P.C. by the prosecution was recorded and it was also observed that the order of closure of evidence of prosecution by the trial Court cannot be said to be perverse or illegal. It was also observed by the Court that in view of the findings of this Court in **Surinder Singh vs. State of Haryana, 1988 (1) Page 377,** the order closing evidence being interlocutory order cannot be assailed before the Court of Sessions under Section 397 Cr.P.C.

Learned counsel relies upon order dated 26.9.2011

passed by Judicial Magistrate, 1st Class, Jalandhar, vide which PW ASI Mohinder Singh was found to be at fault in terms of non-compliance to the Court's order and he was summoned by means of bailable warrants. For ready reference, order dated 26.9.2011 is reproduced here as under:-

“Present: APP for the Stated

Accused are on bail with counsel.

Process issued to PW ASI Mohinder Singh received back with the report that he has already been examined. However, this is not compliance of Court's order. I am satisfied that the said PW is trying to manipulate the service. Present case is targeted for Samadhan-2011. As such PW ASI Mohinder Singh is ordered to be summoned through bailable warrants in the sum of ₹ 5,000/- with one surety in the like amount for 7.10.2011. His salary is ordered to be attached. Accused Surjit Singh has filed an application seeking permission to visit abroad. Copy supplied. Its reply be filed on 7.10.2011.”

It appears that while passing order dated 7.10.2011, trial Court has ignored the aforesaid order. No reference has been made to the requirement of showing compliance of the Court order by Mohinder Singh ASI, nor it was ascertained whether he came present in the Court in pursuance to bailable

warrants issued against him. Impugned order dated 7.10.2011 remained totally non speaking on the aforesaid aspect. The order dated 10.11.2011 is equally faulty inasmuch as on one hand revisional Court is endorsing the fact that order closing evidence on the prosecution by order of the Court cannot be held to be perverse on the other hand, the Court did not entertain the case being not maintainable, having arisen out of interlocutory order. The order passed by Additional Sessions Judge, Jalandhar cannot be allowed to stand being totally anomalous .

It is a settled principle of law that if the witness does not appear despite proper service, Court is obligated to take coercive steps in order to secure presence of such witness. By order dated 26.9.2011, such a course was adopted by the trial Court but that order was totally ignored by the trial Court at first instance as well as by the revisional Court. On this issue, learned counsel relies upon Harish Chhabra vs. State of Punjab 2012 (20 RCR (Crl.) 52 and Parkash Kaur vs. State of Punjab 2001 (3) RCR (Crl.) 136.

Keeping in view the nature of order passed by revisional Court dated 19.11.2011 and order dated 7.10.2011 passed by the trial Court in which previous order dated 26.9.2011 was virtually ignored, this Court is of the opinion that the evidence of the prosecution should not have been closed by the trial Court without awaiting compliance of order dated

26.9.2011. Hence, impugned orders dated 7.10.2011 passed by Judicial Magistrate, Ist Class, Jalandhar and order dated 19.11.2011, passed by Additional Sessions Judge, Jalandhar are hereby quashed. Trial Court will proceed with the case from the stage on which order dated 26.9.2011 was passed in accordance with law. Since the case was targeted as Samadhan 2011, therefore, trial Court is directed to conclude the trial expeditiously.

Petition stands disposed of.

(RAJ MOHAN SINGH)
JUDGE

July 20, 2015
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