

IN THE PUNJAB & HARYANA HIGH COURT AT CHANDIGARH

CRM-M-39478-2014

Date of decision : 16.01.2015

Dharambir Sharma

... Petitioner

Versus

State of Haryana

... Respondent

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr.Rajesh Bansal, Advocate
for the petitioner.

Mr.Rajesh Gaur, Addl. A. G.Haryana.

REKHA MITTAL, J.

The present petition under Section 482 of the Code of Criminal Procedure (in short 'Cr.P.C.') lays challenge to order dated 13.11.2014 passed by the Judicial Magistrate Ist Class, Panipat in case titled 'State Vs. Amit' pertaining to FIR No.133 dated 10.03.2008 registered in Police Station City Panipat for offence punishable under Sections 323, 325, 452, 506 read with Section 34 of the Indian Penal Code (in short 'IPC') whereby evidence of the prosecution stands closed by order of the Court.

On 19.11.2014, the order passed by this Court reads as follows:-

“Counsel for the petitioner contends that a serious prejudice would be caused to the petitioner for want of examination of Dr. Anil Kumar whose presence was secured by the court through coercive process and later application for additional evidence was allowed for his

examination and he still did not appear in the court despite service throughailable warrants with an undertaking to appear before the court on 13.11.2014. It is further submitted that the Judicial Magistrate in place of initiating appropriate action against Dr. Anil Kumar and securing his presence through warrants of arrest, has closed the evidence without any fault attributable to the petitioner.

Notice of motion for 16.1.2015.

On asking of the Court, Mr. Amit Kumar, DAG, Haryana accepts notice.

In the meantime, passing of final order by the trial court shall remain stayed. The Secretary, Health and Family Welfare, Haryana is directed to look into conduct of Dr. Anil Kumar that for securing his presence, the court had to issueailable and non-ailable warrants on several occasions.”

Counsel for the State is not in a position to controvert the submissions made by counsel for the petitioner recorded in the order of notice of motion.

Keeping in view the above, the order passed by the trial Court closing evidence of the prosecution without examining Dr. Anil Kumar, a material witness to prove the nature of injuries sustained by the victim-complainant cannot be allowed to sustain. As a result, the order impugned is set aside to the limited extent that the prosecution is provided one

opportunity to examine Dr.Anil Kumar as prosecution witness. The trial Court is directed to ensure presence of Dr.Anil Kumar on the date fixed so that there is no delay in conclusion of prosecution evidence.

Disposed of accordingly.

(REKHA MITTAL)
JUDGE

January 16, 2015.

DK