

**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

**Crl. Misc. No.M- 5722 of 2015
Date of decision :20.03.2015**

Sewa Singh

.....Petitioner(s)

versus

State of Punjab

...Respondent(s)

CORAM: HON'BLE MS. JUSTICE ANITA CHAUDHRY

Present: Mr. Prateek Pandit, Advocate
for the petitioner.

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ANITA CHAUDHRY, J (ORAL)

Crl. Misc. No.8849 of 2015 is allowed and documents
Annexures P-8 to P-10 are taken on record.

The petitioner along with two other persons is facing
trial in FIR No.200 registered on 30.10.2006. A case was
registered relating to an incident which took place in the after-
noon of 30.10.2006. The petitioner and some other are accused
of trespassing into the land, raising the lalkara and then pulling
Harbhajan Singh down from the tractor and inflicting blows with
Kirpan, Dang, Sua etc. The injuries caused to Harbhajan proved
fatal.

The prosecution had examined its entire evidence and
statement of the accused was recorded and thereafter, the case was

fixed for defence evidence. The petitioner filed an application (Annexure P-2) to summon two defence witnesses. He wanted to summon Dr. Kulwant Singh, Medical Officer from the Civil Hospital to show his admission in the hospital on that day and one Swaran Kaur. Petitioner had mentioned in his application that he had gone to meet Swaran Kaur where he fell ill and was later admitted in the hospital.

The prosecution opposed the application and raised the plea that no plea was raised nor the defence was put to any of the witnesses nor this fact was mentioned in the statement recorded under Section 313 Cr.P.C. and at the belated stage, the accused had concocted a false story and had fabricated evidence and had no material witness to support him. The application was dismissed by the Sessions Judge.

The Sessions Judge had noticed that the petitioner could not be arrested and was declared proclaimed offender. The trial against the remaining accused had concluded. It was after the arrest of the petitioner, supplementary challan was filed against him. It noted that nowhere during the trial or the cross-examination of the prosecution witnesses, the petitioner had stated that he was admitted in any hospital nor he had stated that he had gone to Swaran Kaur's house. The trial Court noted that the plea raised by the petitioner was an afterthought and with a view to prolong the trial, it adjourned the case for remaining defence evidence and arguments.

Dis-satisfied with order, the petitioner has filed the present petition.

The grievance of the petitioner is that the trial Court has erred in declining the prayer to summon both the witnesses. It was urged by counsel for the petitioner that opportunity should have been given to the accused to adduce defence evidence to prove the plea of alibi though the same was not taken by him in his statement under Section 313 Cr.P.C. Reliance has been placed upon ***T. Nagappa Vs. Y.R. Muralidhar 2008(3) RCR (Crl.) 926, State of Rajasthan Vs. Manoj Kumar 2014(5) SCC 744 and Kashi Ram Vs. State of M.P. 2001(4) RCR(Crl.) 556.***

The petitioner intends to examine Dr. Kulwant Singh, Medical Officer, Civil Hospital, Zira and one Swaran Kaur of Moga. No document had been produced before the trial Court or even here to show that he was under treatment at that time.

A perusal of the zimni orders appended with the main petition show that the case was being fixed for defence evidence, since 10th December, 2014. It was, thereafter, adjourned to 20.12.2014 and then to 17.01.2015. No witness was produced on any of the dates. On 17.01.2015, it was adjourned to 04.02.2015.

The record is silent as to when the application for summoning the witnesses was filed. No date has been given in the petition nor the date on which reply was submitted by the prosecution. It is, however, clear that the application was disposed of on 11.02.2015.

Section 243(2) of the Code clearly provides that the Court has the powers to refuse to summon any person as a witness on any of the three different grounds: (a) if any witness

is cited for the purpose of vexation; (b) if any witness is cited for causing delay; and (c) if any witness is cited for defeating the ends of justice. The purpose of furnishing a list of witnesses and documents to the Court before the accused is called upon to enter on his defence is to afford an occasion to the Court to peruse the list. On such perusal, if the Court feels that examination of the persons mentioned in the list is quite unnecessary, would only result in procrastination, it is the duty of the Court to disallow the examination of the witnesses which it is intended only just to delay the proceedings.

In the instant case, the petitioner could not satisfy the Court as to how the examination of the witnesses was relevant as the plea of alibi was never raised or put to any witnesses at the trial or even in the statement recorded under Section 313 Cr.P.C. The orders available on record show that every attempt is being made by the accused to get the case adjourned. The incident had taken place in 2006. The accused could not be arrested, therefore, the trial against him had commenced years later. The co-accused were tried and were convicted much earlier.

I have gone through the case law relied upon by learned counsel for the petitioner but none of them helps the petitioner.

In the case of ***T. Nagappa*** (supra) when evidence in respect of self defence of the accused was refused, it was held that the rejection was not proper. In the present case the accused had not raised the defence that he was admitted in the hospital

on the day of occurrence. Likewise, in the case of ***Manoj Kumar and Kashi*** (supra), it was held that the plea of right of private defence can be taken at any stage of trial on the basis of material on record even if the accused had not taken the plea of right of private defence in their statement under Section 313 Cr.P.C. This is not the position here. The case in hand is not of self defence. The accused wants to introduce a new defence after witnesses of the prosecution have been examined and statement under Section 313 Cr.P.C. had been recorded. The trial Court rightly declined the prayer of the petitioner. No ground for interference is made out. Dismissed.

(ANITA CHAUDHRY)
JUDGE

20.03.2015

Sunil