

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM No. M-1119 of 2016 (O/M)
Date of decision : 14.1.2016

Amrik Singh

..... Petitioner

Versus

State of Haryana

..... Respondent

CORAM : HON'BLE MR. JUSTICE KULDIP SINGH

Present:- Mr. Preetinder S. Ahluwalia, Advocate,
for the petitioner.

1. Whether the Reporters of local newspaper may be allowed to see the judgment ?
2. To be referred to the Reporter or not.
3. Whether the judgment should be reported in the digest ?

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KULDIP SINGH J. (ORAL)

Impugned in the present petition is order dated 5.1.2016 (Annexure-P-9), passed by the learned Judicial Magistrate 1st Class, Hoshiarpur, in FIR No. 422 dated 10.12.2014, registered under Section 409 IPC at Police Station Sadar, District Hoshiarpur, vide which the application dated 2.12.2015 (Annexure-P-8), filed by the present petitioner for compliance of the order dated 18.9.2015 (Annexure-P-5), passed by the learned Additional Sessions Judge, Hoshiarpur, was dismissed with costs of Rs. 1,000/-, to be deposited by the accused in District Legal Services Authority.

The learned counsel for the petitioner contends that in this case, the petitioner is facing charge under Section 409 IPC for

CRM No. M-1119 of 2016 (O/M)

-2-

misappropriation of two cheques bearing Nos. 278915 and 278916, dated 26.2.2004, for Rs. 4,45,479/- and 5,53,796/- respectively, which are stated to have been encashed, but the amount was shown to be less. The charge was framed on 6.9.2010. It is further contended that vide order dated 30.7.2015 (Annexure-P-3), passed by the learned Judicial Magistrate 1st Class, Hoshiarpur, the prosecution evidence was closed by order after granting last opportunity. Thereafter, the prosecution moved an application under Section 311 Cr.P.C. for recalling of the witnesses for cross examination. The same was also dismissed, vide order dated 21.8.2015 (Annexure-P-4), passed by the learned Judicial Magistrate 1st Class, Hoshiarpur. However, the revision was preferred against the order dated 30.7.2015 and the same was allowed by the learned Additional Sessions Judge, Hoshiarpur, vide order dated 18.9.2015 (Annexure-P-5). The prosecution was given two opportunities to examine the material witnesses within a span of one month.

The learned counsel has referred to the various orders of the Courts below to show that more than two effective opportunities have been granted and despite that, one more adjournment has been granted. It is further contended that on every date, the learned counsel for the complainant was present, but the witnesses were not being produced. Now, when the accused moved an application before the lower Court that no further opportunity is to be granted in terms of the order dated 18.9.2015 (Annexure-P-5), passed by the learned

CRM No. M-1119 of 2016 (O/M)

-3-

Additional Sessions Judge, Hoshiarpur, one more opportunity has been granted by ignoring one of the adjournment, while counting number of adjournments, vide order dated 5.1.2016 (Annexure-P-9), passed by the learned Judicial Magistrate 1st Class, Hoshiarpur.

I have heard the learned counsel for the petitioner and have also carefully gone through the file and order dated 5.1.2016 (Annexure-P-9), passed by the learned Judicial Magistrate 1st Class, Hoshiarpur, as well.

The learned Judicial Magistrate 1st Class, Hoshiarpur, has adjourned the case to 20.1.2016 for cross examination of Paras Ram and Gurdev Chand (Pws), who were ordered to be summoned. The learned counsel for the complainant was also strictly directed to ensure the presence of the witnesses at his own responsibility.

Strictly speaking, the prosecution has already exhausted two effective opportunities. Two of the witnesses are not appearing. Earlier also, after granting many opportunities, the prosecution evidence was closed, vide order dated 30.7.2015 (Annexure-P-3), passed by the learned Judicial Magistrate 1st Class, Hoshiarpur. In this way, the prosecution was not entitled to any further opportunity. However, keeping in view the facts and circumstances that two of the witnesses have been summoned for cross examination, this Court does not feel that the interference in the impugned order dated 5.1.2016 (Annexure-P-5), passed by the learned Judicial Magistrate 1st Class, Hoshiarpur, is required. However, to ensure the speedy disposal

CRM No. M-1119 of 2016 (O/M)

of the case, it is directed that it shall be the duty of the prosecution to obtain summons of the said witnesses and produce them in Court. In no circumstances, the lower Court shall grant any further opportunity to the prosecution after 20.1.2016 and shall dispose of the case expeditiously, which has become more than five years old. The costs of Rs. 1,000/- imposed by the lower Court on the present petitioner, are also set aside.

With the abovesaid observations, the present petition is disposed of.

(KULDIP SINGH)
JUDGE

14.1.2016
sjks