

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-31304-2016 (O&M)

Date of decision: October 25, 2016.

Gunraj Singh

... **Petitioner**

v.

State of Punjab and others

... **Respondents**

CORAM: **HON'BLE MR. JUSTICE A.B. CHAUDHARI**

Present: Shri APS Shergill, Advocate for the petitioner.

Shri Shailesh Gupta, Additional Advocate General, Punjab.

Shri Deepak Bhardwaj, Advocate for respondent No.2.

A.B. Chaudhari, J. (Oral):

The petitioner, originally complainant, has put to challenge the order dated 8.8.2016 passed by learned Additional Sessions Judge, Hoshiarpur, confirming the order dated 26.2.2016 passed by Chief Judicial Magistrate, Hoshiarpur by which the application filed by the petitioner-complainant under Section 311 Cr.P.C. and the other one under Section 246 (6) Cr.P.C., were rejected.

Heard learned Counsel for the rival parties at length.

Learned Counsel for the petitioner vehemently contended that the petitioner-complainant wants to examine only one witness and therefore one last opportunity to the petitioner should be allowed to examine the witness in support of the case of the complainant. He cited decision of the Apex Court in the case of Sayeeda Farhana Shamim v/s State of Bihar and

another, 2008(3) RCR (CrI.) 147 and submitted that the trial court has the power to summon additional witnesses or recall the witness and therefore, it is unfair on the part of the trial court in not exercising the power vested in it. Learned Counsel for the petitioner, therefore, submitted that the petitioner-complainant should be allowed to examine the witness before the trial court.

Per contra, learned Counsel for the respondent supported the impugned orders and submitted that the two courts have concurrently found no reason to allow the petitioner to continue to delay the trial which is being tried for the last 12 years. According to him, the petitioner-complainant is deliberately trying to delay the trial as the respondent-accused, who is a government servant, is likely to be considered for promotion in the immediate future. He submitted that even otherwise on merits, both the orders are legal, correct and proper and the applications, therefore, have been rightly rejected by the trial court as well as the revisional court.

While hearing learned Counsel for the rival parties, I have perused the entire record, so also the reasons recorded by the trial court as well as the revisional court. I quote para 7 from the revisional court's judgment, which reads thus:-

“7. Perusal of record of trial court would go to show that the trial has reached at the final stage and even the statement of accused have also been recorded. The revision petition against non framing of charge under Section 27 of the Arms Act has been pending before the Hon'ble High Court. It has been contended that the passing of final order has been stayed by the Hon'ble Court. Admittedly

witness Dr. AJT John Singh was not examined before framing of the charge. It is after framing of the charge that the complainant wants to examine him. Importantly, it is worthwhile to observe that both the State case and the complaint case filed by the revisionist were clubbed together when the person who examined the dead birds gave his report has already been examined, then no further purpose is going to be served by examining of witness Dr. AJT John Singh Dean and Director of Wild Life Institute of India Chandanberi, Dehradun, specially when it was not him who examined the dead birds. So no further purpose is going to be served by summoning Dr. AJT John Singh as it is not going to improve the case of the prosecution in any further way. The application was moved while the case was fixed for defence evidence.”

Apart from the above, what I find is that the prosecution case is about the death of two peahens and four partridges. The incident is said to have taken place in the year 2004 and the trial is continuing for the last 12 years. It is seen from the record that it was PW14 Dr. S.P. Goyal, retired Nodal Officer, Wild Life Forensic Cell, Wild Life Institute of India, Dehradun who was examined. He made deposition before the trial court. The relevant portion of his deposition is to the following effect:-

“The sealed container along with the letter was brought by the Wild Life officers to the Institute. The container was opened by me and I found there were six birds in the container of which four were grey partridge (Francolinus Pondicerianus) and two peahens (Pavo Cristatus). The birds were examined and found presence of blood

stains on the chest muscles as well as thigh muscles. These spots were examined and the pellets were found in five birds and which were collected. These pellets were sealed back in vials marked 1 to 4 and 6 and were sealed and handed over to Mr. Tersem Lal, Wild Life Inspector, Hoshiarpur along with the report prepared by me which was forwarded by my Director to the DFO, Hoshiarpur. I identified the signature of my Director being serving under me. This report contained my observation on which this was prepared and the same is Ex.PW14/B (objected to on the ground of mode of proof)."

It is thus clear from the above deposition of PW14 Dr. S.P. Goyal that it was he who had examined the birds and had prepared the report and it was he who had identified the signatures of his Director through whom he had sent the report to DFO, Hoshiarpur. The signatures of Director and witness sought to be examined is Dr. A.J.T. John Singh, Dean and Director of Wild Life institute of India, Dehradun who was proposed to be examined by the complainant under the applications in question. On the contrary, the main report was prepared by PW14 Dr. S.P. Goyal who was examined and cross examined at length. The letter PW10-A shows that the examination of the dead birds was done by Technician Vinod Thakur and Project Biologist Vivek Sheraj Pal under the supervision of Dr. S.P. Goyal. It is thus clear that the two courts below have committed no mistake either on facts or on law. The petitioner-complainant after all cannot be allowed to make a mountain out of mole. The judgment cited by Learned Counsel for the petitioner, on facts, has no relevance and on the contrary the caution in the judgment that the provision should not be used for giving handle to the

complainant to harass the accused, would be relevant.

In the result, I find no merit in the petition. Thus, the same is dismissed.

October 25, 2016.
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[**A.B. Chaudhari**]
Judge

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No