

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

CRL. MISC. No.M-31842 OF 2016
DATE OF DECISION : 20th DECEMEBR, 2016

Ravinder Kumar Dutta

.... Petitioner

Versus

State of Haryana & another

.... Respondents

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

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Present : Mr. Rajesh Kumar Garg, Advocate for the petitioner.
 Mr. Deepak Grewal, DAG, Haryana.
 Mr. Chirag Kundu, Advocate for respondent No. 2.

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A. B. CHAUDHARI, J. (ORAL)

Rule heard forthwith with the consent of the counsel for the rival parties.

Order made by the trial Court dated 26.08.2016 (Annexure P-3) is under challenge in this petition by which the trial court has dismissed the application filed under Section 311 Cr.P.C. by the petitioner.

The prosecution has taken en number of opportunities to examine the witnesses. Therefore, the evidence of the prosecution was closed. In para 6 the Court has stated thus:

“Perusal of the record shows that charge against the accused was framed on 10.9.2014. Thereafter, fourteen effective opportunities were availed by the prosecution for adducing prosecution evidence. On 18.04.2016, one PW was recorded and finding no justification for

adjourning the case any further for evidence of prosecution, the same was closed by learned predecessor Court. I am of the opinion that the evidence was closed by the order of the Court after finding it unjustifiable that prosecution should be given any more opportunities. It is the duty of the prosecution to get the witnesses examined on time. The prosecution evidence was closed after 2 years. Even if the witness was present on one date, it was the duty of the prosecution to diligently recall these witnesses. It is highly unjustifiable to now re open the prosecution evidence as no reasonable ground has been given for the same.”

The learned counsel for the petitioner submits that the petitioner has suffered head injury because of the accident in the offence in question.

Learned counsel for respondent No.2 submits that no accident had taken place and it is a personal rivalry. He further submits that the petitioner did not file any case for compensation under the MACT Act.

Be that as it may, that finding in holding that the prosecution was given an number of opportunity to examine prosecution witness cannot be faltered. But the petitioner who is husband of the victim has come before this Court for grant of opportunity. In my opinion, in a State case filed by the police, if there is failure on the part of the State to produce witnesses then the victim cannot be allowed to suffer. It is the duty of the State to produce all the witnesses and at the same time the interest of the victim cannot be buried.

In that view of the matter the impugned order dated 26.08.2016 is quashed and set aside. The Superintendent of Police, Ambala shall oversee the

conduct of the trial since there was failure on the part of the police to produce the prosecution witnesses before the Court.

Learned counsel for the respondent No.2 submits that respondent No.2 has to come from Delhi to attend the case at Ambala.

Learned trial Court shall consider the issue of his exemption from personal appearance sympathetically looking to the fact that the respondent-accused is not at fault in the entire matter as the prosecution failed to bring the witnesses for over the last few years.

In the result, I make the following order:

ORDER

- (i) CRL. MISC. No.M-31842 OF 2016 is allowed
- (ii) Impugned order dated 26.08.2016 passed by learned JMIC, Ambala (Annexure P-3) is quashed and set aside.
- (iii) The trial Court shall examine the witnesses who have not been examined by the prosecution.
- (iv) The Superintendent of Police, Ambala is directed to oversee the conduct of the prosecution case before the trial Court.
- (v) Learned trial Court shall consider the issue of exemption from personal appearance sympathetically.

20TH DECEMBER, 2016
'raj'

(A. B. CHAUDHARI)
JUDGE

<i>Whether speaking/reasoned</i>	:	<i>Yes</i>	<i>No</i>
<i>Whether Reportable</i>	:	<i>Yes</i>	<i>No.</i>