

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

CRM-M No.521-2015

Date of Decision : 21.03.2016

Mohinder Singh Chauhan

.....Petitioner

Versus

State of Haryana and others

.....Respondents

CORAM : HON'BLE MR. JUSTICE FATEH DEEP SINGH

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

Present : Mr. Manoj Kaushik, Advocate
for the petitioner.

Mr. Munish Sharma, Asstt. A.G., Haryana
for respondent No.1-State.

None for remaining respondents.

FATEH DEEP SINGH, J.

This is a petition under Section 482 Cr.P.C. preferred by Mohinder Singh Chauhan-petitioner, who claims to be the complainant in case bearing FIR No.257 dated 4th July, 1999 under Sections 148, 149, 323, 324, 427 of IPC registered with Police Station Jhajjar, District Jhajjar

and has sought setting aside of order dated 1st September, 2014 (Annexure P-1) passed by learned Additional Sessions Judge, Jhajjar as well as seeking directions to the accused-private respondents to appear before the trial Court to facilitate completion of the trial.

Heard Mr. Manoj Kaushik, Advocate for the petitioner and Mr. Munish Sharma, Asstt. Advocate General, Haryana for respondent No.1-State and perused the records of the case.

It is not displaced by any means that in an earlier petition titled as Hukam Singh and others Vs. State of Haryana and another bearing CRM-M No.21866 of 2009 (O&M) which was from the side of the accused, this Court while disposing off the petition which was dismissed as withdrawn passed following orders :-

“.....However, interim order of exemption from personal appearance passed by this Court on 06.11.2009 shall continue during the trial of the case.”

Admittedly, as has been canvassed before this Court the primary offences for which the accused are being tried under Sections 427, 323 IPC which both are non-cognizable and bailable along with offence under Section 324

IPC which is cognizable and non-bailable prescribing imprisonment up to three years. Thus, by definition assigned to warrant case in Section 2(X) of the Code of Criminal Procedure, 1973 (in short “the Code”) any offence punishable with death, imprisonment for life or imprisonment for a term exceeding two years, ought to be tried as a warrant case by so virtue of attraction of Section 324 IPC, the procedure prescribed for trial of warrant cases needs to be followed. By virtue of Chapter XIX of the Code which deals with trial of warrant cases by Magistrate and as has been contended by the learned State Counsel Mr. Munish Sharma, Asstt. Advocate General, Haryana being a case instituted on a Police report under Section 238 of the Code provides presence of the accused before a Magistrate at the commencement of the trial and after the Magistrate ensures that provision of Section 207 of the Code has been complied with and upon considering the Police report and the documents which form part of the report under Section 173 of the Code, the learned Magistrate may frame charges in terms of Section 240 of the Code and which charges upon its framing if the accused is not discharged, shall be read and explained to the accused and his plea, if he feels guilty of the

offence charged or claims to be tried has to be recorded and thereafter, the evidence of the prosecution is to be undertaken. Section 239 of the Code, if is not exercised for the discharge, would after prosecution evidence lead to inevitable recording of the statement of the accused in terms of Section 313 of the Code. which is mandate for enabling the accused to personally explain any circumstance appearing in the evidence against him and which answers given by the accused may be taken into consideration at the inquiry or the trial. Furthermore Section 279 of the Code envisages that in a situation where the accused is unable to understand the language in which the evidence is given, the same is to be interpreted in language understood by him or to his pleader.

As has been canvassed irrefutably, Section 205 of the Code empowers the Magistrate by virtue of Chapter XVI to dispense with personal attendance of the accused and that Section 317 of the Code leaves no scope to doubt that at any stage of the inquiry or trial under the Code of Criminal Procedure, if the Magistrate or the Judge as the case may be, is satisfied for reasons to be recorded that the personal attendance of the accused before the Court is not necessary in the interest of justice may dispense with his attendance.

With all fairness counsel for the respondent/State squarely accepts that there has been no exercise of such powers either under Section 205 or under Section 317 of the Code by the trial Court/Magistrate in this Case to dispense with the appearance of the accused. Thus, to the mind of this Court when the original petition has been dismissed as withdrawn by the accused it does not necessitate continuation of orders dated 30.08.2013 of this Court (Annexure P-3) in the absence of any tangible reasons therein and ought to have gone with the petition automatically and rather subsequent directions are pure encroachment of the judicial powers of the Court below as the presiding officer is the best judge to determine it so. By no means it was necessitated for this Court to have encroached upon it. Thus, it has been rightly argued that continuous absence from the trial by the accused would certainly hamper accomplishment of essential prerequisites at the trial for which presence of the accused is a must. Even the orders dated 01.09.2014 (Annexure P-1) passed by the learned Additional Sessions Judge, Jhajjar has taken into consideration the likelihood of the applicability of Section 307 IPC by holding and directing the learned Magistrate to hear arguments on charge and to pass orders and, thereafter,

adjourned the matter for at least one week for framing the charges and if the charges are to be framed by the Magistrate or in the alternate if the case is committed to the Court of Sessions for the trial and when the learned Magistrate as per the orders dated 31.07.2014 (Annexure P-2) passed on the application dated 21.03.2014 of the complainant opined that in the eventuality of the orders of this Court (Annexure P-3) has refused to act thereon obviously showing virtually helplessness on account of the said orders of this Court.

Thus, in the totality of what has been detailed and discussed above, this Court does not intends to usurp the powers of the Magistrate at the trial/inquiry and the present petition is allowed to the extent directing all the accused who have till date not appeared before the trial Court (as well as the accused who have already been appearing) to appear before the trial Court within 30 days of passing of this order with the direction to the trial Court to consider within the provisions of law by exercise of its powers in terms of Section 205 of the Code for exemption of the appearance of the accused if so necessitated. However, the trial Court needs to ensure continuation of the trial. It needs to be clarified that the earlier orders passed by this Court or the present order

shall not prejudice the mind of the trial Court in exercise of these powers of personal exemption of the accused.

The petition stands disposed off accordingly.

March 21, 2016
Dpr

(FATEH DEEP SINGH)
JUDGE