

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM No.M-7484 of 2016 (O&M)
Date of Decision: March 03, 2016

Vipin Gupta

...Petitioner

VERSUS

State of U.T. Chandigarh

...Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Maninder Arora, Advocate
for the petitioner.

INDERJIT SINGH, J.

Petitioner has filed this petition under Section 482 Cr.P.C. for setting aside the order dated 20.01.2016 whereby the evidence of the complainant and other witness Raghu Nath was closed in case FIR No.56 dated 05.04.2008 under Sections 380, 448, 451, 427, 506 and 120-B IPC and trial Court be directed to record the statements of complainant and another witness Raghu Nath.

I have heard learned counsel for the petitioner and have gone through the record.

From the record, I find that in the impugned order dated 20.01.2016, learned JMIC, Chandigarh has stated that no PW was present. Counsel for the witness moved an application for exemption of witnesses Raghu Nath and Vipin Gupta. It is also stated in the order that from the perusal of the file it reveals out that challan was

presented on 25.04.2009 and charge was framed on 26.04.2011 and after that the case was fixed for prosecution evidence and on 14.09.2011 witness Vipin Gupta moved an exemption application and did not turn up in the Court for his examination and further on 24.08.2013, summons of Vipin Gupta again received back with the report that summons were got noted to his mother but again he did not come present in the Court and his bailable warrants were issued. On 25.11.2013 Vipin Gupta appeared and requested for a short adjournment on the ground that he is not felling well and he was later on bound down and thereafter, he did not appear in the Court. It is also in the order that Vipin Gupta again appeared on 02.12.2015 and did not get his evidence recorded and vide order dated 02.12.2015, it was specifically held that the witnesses present are not examined as they are not interested in getting their evidence recorded and it was made clear that if on the next date they do not give their evidence, then it will be presumed that they are not interested in getting their evidence recorded and no further opportunity will be granted and after that they moved an application for transfer of case which was dismissed by learned Sessions Judge, Chandigarh and the case was fixed for 21.12.2015. On 21.12.2015, again counsel for Vipin Gupta and Raghu Nath moved an application for exemption which was again allowed and case was fixed for 20.01.2016. On that day i.e. on 20.01.2016, an application has been moved for exemption and in this application, it is nowhere mentioned that as in which case witness Raghu Nath has to appear in the Sessions Court and further there is

no medical evidence that Vipin Gupta is suffering from fever.

Learned Magistrate dismissed that application and passed the order that it is clear from the conduct of the witnesses that these witnesses are not interested in getting their evidence recorded and as such these witnesses are hereby discharged and their evidence will not be recorded in the present case as they are trying to misuse the provisions of the law, which cannot be allowed. The Court below further held that other material witnesses have already been examined, however, one more opportunity is granted to the prosecution to examine any other witness except these above-said two witnesses.

The perusal of the impugned order itself shows the conduct of witnesses Vipin Gupta and Raghu Nath that they are more interested in prolonging the matter and despite appearing in the Court, on one or other ground, asked for adjournments and specific order has been passed by the Court that it looks that they are not interested in examine themselves.

Keeping in view the facts and circumstances of the present case, I find that no ground is made out to give direction to learned JMIC, Chandigarh to examine these above-stated witnesses by giving one more opportunity as these witnesses have already availed so many opportunities and evidence was closed. The impugned order dated 20.01.2016 passed by learned JMIC, Chandigarh is correct and as per law. No illegality has been committed while passing the impugned order. At the time of arguments, the conduct of these

witnesses has not been explained as to why they behaved in such a way in the Court. Rather, their conduct amounts to disrespect to the orders of the Court.

Therefore, finding no merit in the present petition, the same is dismissed.

March 03, 2016
Vgulati

(INDERJIT SINGH)
JUDGE