

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

**CRM-M No.14293 of 2017
Date of Decision: 26.04.2017**

Parmod KumarPetitioner

Versus

Ashwani Chadha ... Respondent

CORAM:-HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present:Mr. Manish Jain, Advocate
for the petitioner.

RAJ MOHAN SINGH, J.

[1]. Petitioner has assailed the order dated 19.04.2017 passed by Additional Sessions Judge, Ambala, whereby order dated 31.03.2017 passed by Judicial Magistrate First Class, Ambala was upheld.

[2]. An application was filed by the accused/petitioner before the trial Court seeking permission to tender certain documents in defence evidence. The petitioner alleged that at the time of preparation of the case, the documents in question came to the notice of his counsel, which according to him were necessary documents to be tendered in defence evidence.

[3]. The application was contested by the complainant/respondent on numerous grounds.

[4]. Trial Court after discussing the conduct of the petitioner at numerous stages, found the application to be misconceived.

[5]. The case was filed by the complainant on 13.11.2015.

The accused/petitioner appeared in the Court on 16.02.2016 and was bailed out. The notice of accusation was served upon the petitioner on 01.03.2016. The case was adjourned to 15.03.2016 for evidence of the complainant. The affidavit of the complainant was tendered on 15.03.2016, but his cross examination was not done by the accused/petitioner. The case was adjourned to 23.03.2016 for the same purpose i.e. cross examination of the complainant. On 23.03.2016, also cross examination of the complainant was not done by the accused/petitioner and the case was adjourned to 01.04.2016 subject to payment of cost of Rs.500/-. Again cross examination was not done on 01.04.2016 and the case was adjourned to 02.04.2016. The same was the position on 02.04.2016 and the case was adjourned to 12.04.2016 for cross examination of the complainant subject to cost of Rs.1000/-.

[6]. On 12.04.2016, the application was filed by the accused/petitioner for dismissal of the case under Section 264 Cr.P.C. The second application was filed for adjournment of the case. The case was adjourned to 19.04.2016. On 19.04.2016, reply was not filed and the case was further adjourned to 30.04.2016. On 30.04.2016, a reply was filed. Another application by the complainant was filed for taking action against the accused/petitioner. The case was adjourned to 16.05.2016

for reply and consideration. The application under Section 264 Cr.P.C was dismissed on 16.05.2016 with cost of Rs.2000/-. The complainant withdrew his application for taking action against the accused/petitioner and the case was adjourned to 25.05.2016 for cross examination of the complainant. Cross examination of the complainant was not done even on 25.05.2016 and the cross examination of the complainant on behalf of the accused/petitioner was treated to be Nil.

[7]. Thereafter, a revision petition was filed by the accused/petitioner against the order dated 25.05.2016, wherein he was granted one opportunity by the Court of Sessions subject to payment of Rs.5000/- vide order dated 15.07.2016. The Court of Sessions recorded in its order that number of opportunities had already been provided to the accused/petitioner for cross examination of the complainant, but he had failed to do the same, but still in the interest of justice, an opportunity was granted to him for cross examination of the complainant.

[8]. In compliance to the order passed by the Court of Sessions, cross examination of the complainant was done and thereafter, statement of the accused/petitioner under Section 313 Cr.P.C was recorded and the case was adjourned for defence evidence. Accused/petitioner availed 9 opportunities for

defence evidence, but inspite of that, he failed to conclude his evidence and his evidence was closed by order of the Court on 22.11.2016. Accused/petitioner again preferred a revision petition and the revisional Court once again granted one opportunity to the accused/petitioner for defence evidence. The case was ultimately adjourned to 06.02.2017 for defence evidence.

[9]. Thereafter, an application was moved by the accused/petitioner for change of date and at his request date was changed from 06.02.2017 to 14.02.2017. Despite the direction given by the revisional Court, no witness was examined on 14.02.2017. The Court took lenient view and adjourned the case further to 03.03.2017 for defence evidence. On 03.03.2017, witness was examined and the case was further adjourned to 16.03.2017 for defence evidence. On the adjourned date i.e. 16.03.2017, an application was filed under Section 311 Cr.P.C by the accused/petitioner, which was disposed of on the same day and the case was adjourned to 20.03.2017 for final arguments. The case was further adjourned at the instance of the accused/petitioner to 27.03.2017 for final arguments. On 27.03.2017, part arguments were heard and the case was adjourned to 28.03.2017 for remaining arguments. Again at the instance of the accused/petitioner, the case was

adjourned to 29.03.2017 with an order of last opportunity. On 29.03.2017, the application in question came to be filed.

[10]. Trial Court also noticed that the accused/petitioner has moved exemption application on number of occasions i.e. on 11 hearings. Trial Court after noticing the aforesaid conduct of the accused/petitioner found that there is no provision for maintaining such type of application, particularly after closure of the defence evidence by order of the Court on two occasions and the documents sought to be adduced have not been spelt out anywhere on record and why the said documents were not tendered at appropriate stage. Trial Court commented upon the relevancy of the documents sought to be tendered and ultimately dismissed the application with a cost of Rs.3000/- vide order dated 31.03.2017. Feeling aggrieved, the petitioner filed a criminal revision before the Additional Sessions Judge, Ambala, which was also dismissed on 19.04.2017 after taking the incriminating facts on record with a special cost of Rs.5000/-

[11]. I have heard learned counsel for the petitioner.

[12]. Taking into consideration factual details on record, I deem it appropriate not to grant any indulgence to the petitioner, whose sole purpose appears to delay the culmination of the case in its logical end. The case has already reached up to the stage of final arguments, wherein, even part arguments have

been heard with last opportunity on 28.03.2017. On 29.03.2017, the present application was filed by the petitioner, which is nothing but an abuse of process of law. The conduct of the petitioner is such which does not entitle him any equitable relief much less the indulgence even under Section 311 Cr.P.C as the documents sought to be adduced have not been explained in the context of any connectivity and concern with the litigation, nor the purpose for which these documents are sought to be tendered has come forth on record. It is true that the Court becomes *functus officio* only after pronouncement of the judgment, but the powers under Section 311 Cr.P.C are required to be exercised in a judicious manner.

[13]. In view of facts and circumstances involved, I do not deem it fit to grant indulgence in favour of the petitioner. This petition is accordingly dismissed.

26.04.2017

prince

(RAJ MOHAN SINGH)
JUDGE

Whether Reasoned/Speaking

Yes/No

Whether Reportable

Yes/No