

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

CRL. MISC. No.M-17101 OF 2017 (O&M)
DATE OF DECISION : 23rd MAY, 2017

Balbir Singh

.... Petitioner

Versus

State of Punjab & ors.

.... Respondents

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

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Present : Mr. Veneet Sharma, Advocate for the petitioner.
 Mr. Daljeet Singh Virk, DAG, Punjab.
 Mr. S. S. Majithia, Advocate for the complainant.

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A. B. CHAUDHARI, J. (ORAL)

CRM-17733-2017

The application is allowed and reply filed by respondents
No.2 to 6 is taken on record, subject to all just exceptions.

CRM-M-17101-2017

Rule.

Heard forthwith with consent of learned counsel for the rival
parties.

The petitioner has filed the present petition to challenge orders
dated 03.03.2017 (Annexure P-4) and 27.04.2017 (Annexure P-7) passed by
the learned Additional Chief Judicial Magistrate, Amritsar in FIR No.523
dated 19.11.2008 registered under Sections 420, 467, 468, 471 & 120-B IPC
at Police Station Civil Lines, District Amritsar.

Learned counsel for the petitioner submitted that there is only
one witness by the name Rajiv Kumar Sharma, Advocate, who is a material
witness for the prosecution who could not be examined because the said

witness did not appear before the trial Court. He further submits that no fruitful efforts were made by the prosecution to produce the witness before the Court. He, therefore, submits that the petitioner is required to be given last opportunity to examine the witness in order to bring the truth before the Court. He has also invited my attention to Annexure P-2 which is statement of Rajiv Kumar Sharma, Advocate recorded under Section 161 Cr. P. C.

Per contra, learned counsel for the respondent-accused has vehemently opposed the present petition and submitted that as many as thirty opportunities have been given to the prosecution to prove its case by bringing the witnesses before the Court. According to him grant of thirty opportunities to examine the witnesses before the Court is good enough and interference by this Court is not necessary. He further submitted that the petitioner ought to have taken steps to produce the said witness before the Court and having failed to do so, the remedy of calling the witness over and again cannot be resorted to. He, therefore, opposed the petition.

At the outset, I find that the case relates to the year 2008 and it is indeed sad that by this time the case should have been disposed of. The prosecution has completed examination of almost all witnesses except Rajiv Kumar Sharma, Advocate. Perusal of the Statement of Rajiv Kumar Sharma to my mind shows that he is a material witness who can unfold the truth before the Court. The objection raised by the counsel for the respondents that the petitioner should have taken steps to prove the same, does not appeal to me. The reason is that this is a police case and production of the said witness was the duty of the prosecution and not of the petitioner/complainant. However, for failure on the part of the prosecution to produce the said witness, the complainant should not be allowed to suffer.

At any rate, the complainant is asking for last opportunity and therefore, I

think the same should be extended. However the case is of the year 2008 and there is a delay in disposal. Directions can be issued to the trial Court under Section 483 Cr.P.C. to complete the trial within stipulated time. In that view of the matter, I think the following order would subserve the ends of justice:

ORDER

- (i) CRL. MISC. No.M-17101 OF 2017 is allowed.
- (ii) Impugned orders dated 03.03.2017 (Annexure P-4) and 27.04.2017 (Annexure P-7) passed by the learned Additional Chief Judicial Magistrate, Amritsar, are quashed and set aside.
- (iii) The prosecution/complainant is directed to produce witness namely Rajiv Kumar Sharma, Advocate before the Court strictly by way of last chance on the next date of hearing. He shall be examined and cross-examined on the same date or following dates but the cross-examination shall not be deferred.
- (iv) The trial Court shall then complete the trial and pronounce the judgment within a period of two months from today.
- (v) The petitioner may take necessary assistance from the trial Court for production of Rajiv Kumar Sharma. It is made clear that the trial Court may issue non-bailable warrant against the witness in case he does not appear.

Disposed of accordingly.

23rd MAY, 2017
'raj'

(A. B. CHAUDHARI)
JUDGE

Whether speaking/reasoned : *Yes* *No*

Whether Reportable : *Yes* *No*