

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-1875 of 2017

Date of Decision: 20.01.2017

Manpreet Singh Sood

....Petitioner

VERSUS

State of Punjab and another

....Respondent

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Mandeep Singh Sachdev, Advocate
for the petitioner.

SURINDER GUPTA, J.

This is petition by Manpreet Singh Sood challenging order dated 22.07.2016 passed by Additional Sessions Judge, Jalandhar whereby he allowed one opportunity to prosecution to examine PW SI Harbinder Singh.

Learned counsel for the petitioner submits that after affording 26 effective opportunities, evidence of prosecution was closed by the trial Court vide order dated 27.07.2015. Thereafter, prosecution moved application under Section 311 Cr.P.C. to summon Investigating Officer SI Harbinder Singh, which was declined by the trial Court but Ist Appellate Court allowed the revision and provided one opportunity to prosecution to examine the witness. He has put-forth two arguments. Firstly, that application under Section 311 Cr.P.C. was not maintainable once the evidence of prosecution had been closed by order and secondly, order passed by Revisional Court amounts to review of order dated 27.07.2015 passed by the trial Court, which is not permissible under law.

Perusal of order passed by learned Additional Sessions Judge

shows that the evidence of prosecution was closed vide order dated 27.07.2015. Thereafter, complainant-Satnam Kaur moved application under Section 311 Cr.P.C. for affording one more opportunity for examining SI Harbinder Singh.

Learned Court of revision while allowing one more opportunity to the prosecution to examine SI Harbinder Singh has taken note of the fact that he (SI Harbinder Singh) was served for 08.05.2015 but on that day he did not appear as he was busy in official duty and had sent a request, which was accepted and thereafter, evidence of the prosecution was closed. Learned Court of revision was of the view that it was duty of the trial Court to secure presence of the witness, who had been served but not appeared, through coercive method, as such, the trial Court has committed error while closing evidence of the prosecution.

Order passed by learned Court of revision does not amount to review of the order of trial Court. Under Section 397 Cr.P.C., the Court of revision is competent to call for and examine the record of any proceeding before any inferior Criminal Court situated within its local jurisdiction for the purpose of satisfying itself about the correctness, legality or propriety of any order. While exercising such powers Court of revision has found that the trial Court has committed lapse by not calling a material witness, who was duly served but could not appear due to his official duties.

I find no legal or factual infirmity in the order passed by Court of revision. This petition has not merit and the same is dismissed.

January 20, 2017

jk

(SURINDER GUPTA)

JUDGE

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No