

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

CRL. MISC. No.M-2821 OF 2017 (O&M)
DATE OF DECISION : 21ST APRIL, 2017

Rajesh @ Kokan

.... Petitioners

Versus

State of Haryana

.... Respondent

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

* * * *

Present : None for the petitioner.

Mr. Rajiv Sardana, Public Prosecutor in person.

Ms. Tanushree Gupta, DAG, Haryana.

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A. B. CHAUDHARI, J. (ORAL)

By order dated March 29, 2017 this Court rejected the petition for grant of bail filed by the petitioner. In the same order this Court had asked the concerned Public Prosecutor to file an explanation as to why the accused persons were not specifically got identified from the witness PW-6 Jatinder Chugh son of Harhbans Lal Chugh who had come to the shop in a car and committed the offences in question.

Now the concerned Public Prosecutor Rajiv Sardana, Deputy District Attorney, office of District Attorney Hisar, has filed submissions on affidavit and has stated thus in para 4 :

“4. Xxx..... Xxx..... The deponent asked the complainant twice to get identify the particular accused but his response was evasive by replying “yahi log the” and immediately thereafter defence counsel raised the objection. Finding evasive

response of the complainant to the deponent, counsel assisting the state, whispered in the ear of the deponent that with the passage of time, complainant may not be able to specify amongst the three as to who had grappled with and fired at the complainant. Finding the suggestion viable, insistence for specific role was not enquired further as he had identified all the three persons and has stated that he had identified the persons present in the Court as his assailants. It is worth mentioning that inadvertently the word 'assailant' is recorded instead of 'assailants' in the evidence, as is apparent from the fact that in the middle of the sentence 'persons' is recorded. The certified copies of order dated 09.09.2016 and deposition of complainant Jitender Chugh on 09.09.2016 are annexed herewith as Annexure R-1 & R-2 respectively."

I have perused the deposition of witness PW-6 Jitender Chugh and in the light of the examination-in-chief recorded by the Public Prosecutor, I find that the above explanation is unsatisfactory. He has however, tendered unconditional and unqualified apology and also assured this Court that he would remain careful in future.

I think, the explanation tendered by him, not being satisfactory and he being a government servant in the employment of the Government, a minor penalty of warning should be entered into his service book.

Accordingly the State of Haryana is directed to record warning in his service book. He thus now discharged on the notice issued by this Court to him.

This Court had come across some cases wherein it was noticed that the examination-in-chief of the witnesses by the Public Prosecutor in the District Courts and in particular before the Sessions Court are not being conducted with the vigor and legal thrust with which they have to be conducted.

It has been reported to this Court by counsel for the State that it is a matter of fact that for conducting Sessions trial in Sessions Court in Punjab and Haryana, no Public Prosecutor is appointed from the practicing Advocates for a tenure appointments like for 1 year, 2 years or 3 years. But the Public Prosecutor who are appointed from the advocates are appointed as Government Servants enjoying all the benefits of service of the Government. It appears that not a single Public Prosecutor in the Sessions Court for conducting Sessions trials, are appointed on tenure appointments from the practicing advocates, who are capable of giving far better results than the Public Prosecutors appointed as Government servants. If such a Public Prosecutor who is a Government servant does not conduct the prosecution as required, he cannot be removed without holding a regular departmental enquiry, which is not the case with the Public Prosecutors appointed on tenure appointments from the practicing advocates in Sessions Courts/others Courts. In other words, once the Public Prosecutors are appointed as Government servant, even if their performance is poor and destructive of the merits of the prosecution cases of the State, they will still continue to be in service. The obvious reason is that departmental enquiries take number of years and then there are intermediate manipulations and so on so forth in

such enquiries. The net result is that the prosecution cases are spoiled which is destructive of rule of law. In some of States in the country, but for quota of around 20-30 per cent for Government appointed Public Prosecutors, the Prosecutors in the Sessions trial who are appointed are from the practicing advocates with tenure appointments like 1 year, 2 years or 3 years, which in my opinion is beneficial

This Court is unable to issue any directions in the matter, particularly because there are statutory rules framed by the Punjab and Haryana Governments, which hold the field. But then, in my opinion, there is a strong need to rethink about the appointments of the Public Prosecutors, particularly in the Sessions trials before the Sessions Courts. This is only the suggestion which this Court would like to give to the States of Haryana, Punjab and Union Territory Chandigarh, with request to consider the same if found proper.

With above observations the case is filed.

21ST April, 2017
'raj'

(A. B. CHAUDHARI)
JUDGE