

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

CRM No.M-35762 of 2015 (O&M)

Date of Decision: May 03, 2017

Bhushan

...Petitioner

VERSUS

Om Parkash and others

...Respondents

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.G.S.Shahpuri, Advocate
for the petitioner.

Mr.Ranjit Singh Saini, Advocate
for respondents No.1 to 7.

Mr.Parveen Aggarwal, Deputy Advocate General, Haryana
for the respondent-State.

INDERJIT SINGH, J.

Petitioner has filed this petition under Section 482 Cr.P.C. for quashing of order dated 28.09.2015 passed by learned Judicial Magistrate Ist Class, Yamuna Nagar at Jagadhri, vide which the evidence of the petitioner-complainant has been closed by Court order in criminal complaint case No.125 dated 28.05.2011.

Notice of motion was issued. Learned counsel for respondents No.1 to 7 and learned State counsel appeared and contested the petition.

I have heard learned counsel for the parties as well as learned State counsel and have gone through the record.

From the record, I find that learned JMJC, Yamuna Nagar at

Jagadhri, allowed the application under Section 311 Cr.P.C. for summoning Dr.Udit Kumar, Radiologist and Dr.Dipender Sharma along with record, vide order dated 15.09.2015. Learned Magistrate held in that order that proposed witnesses are necessary to be examined for just decision of the case. Learned Magistrate also discussed the law in that order where it has been held that non-appearance of witness for want of service of summons or non-appearance of witness despite service of summons shall not given jurisdiction to the court to close the evidence of prosecution. Learned Magistrate in this order dated 15.09.2015, gave one opportunity to the complainant to get examined these witnesses.

Vide impugned order dated 28.09.2015 passed by same learned Magistrate, the evidence of the complainant-petitioner was closed by stating that only one opportunity was given to the complainant to examine the witness, though it is stated in the impugned order that no CW has come present despite issuance of summons by the Court. There is nothing in the order whether the summons issued have been received back served or unserved or have not been received back.

As learned Magistrate had already held that examination of Radiologist and Doctor, who conducted the X-ray as well as MLR, is necessary, therefore, the Court should have procured presence of these witnesses. There is nothing in the order dated 15.09.2015 that the complainant will produce the witnesses himself in the Court. Otherwise also, these witnesses are official witnesses and their presence is to be procured by the Court by issuing summons etc.

In view of the above discussion, I find that impugned order

not as per law and will cause prejudice to the case of the complainant. Therefore, the same is set aside. Finding merit in the present petition, the same is allowed. Learned trial Court is directed to proceed with the case further after examination of the above-said witnesses by procuring their presence as per law.

May 03, 2017
Vgulati

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned	Yes
Whether reportable	No