

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

CRM-M No. 40888 of 2016(O&M)

Date of decision: 27.4.2017

Manish Kumar

....Petitioner

VERSUS

State of Haryana and another

.....Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. B.S. Dhillon, Advocate for the petitioner.

Mr. Vikas Malik, DAG, Haryana.

Mr. D.S. Nain, Advocate for respondent No.2.

REKHA MITTAL, J.

The present petition directs challenge against order dated 23.09.2016 (Annexure P-1) passed by the Sub Divisional Judicial Magistrate, Pehowa whereby application for additional evidence filed under Section 311 of the Code of Criminal Procedure, 1973 (in short 'Cr.P.C.') has been allowed.

Counsel for the petitioner has submitted that a false FIR No.73 dated 26.03.2012 under Sections 323, 406, 498-A, 506 of the Indian Penal Code, 1860 (in short 'IPC') was registered at Police Station Pehowa at the instance of Suman Rani wife of the petitioner. On completion of investigation, challan was presented in the Court and after framing of charge, the prosecution availed as many as 12 opportunities including last opportunity for adducing evidence. Further submitted that even after last opportunity, another opportunity was provided for examination of remaining witnesses but as the prosecution failed to conclude its evidence, same was closed by order of the Court. Another submission made by

counsel is that application for additional evidence is dated 11.08.2015 but the same was filed later, sufficient to show mala fide of the complainant to prolong agony of the petitioner who is in the dock for the past more than 5 years. The last submission made by counsel is that the impugned order may be set aside with a direction to the trial Court to decide the case expeditiously. In the alternative, it has been submitted that in case the impugned order is affirmed, the prosecution may be directed to examine the witnesses (additional evidence) in a single sitting.

Counsel for the State assisted by counsel for the complainant would support the impugned order with the submissions that Section 311 Cr.P.C. gives wide power to the Court to summon any person as a witness or examine any person in attendance or recall and re-examine any person already examined at any stage of any inquiry, trial or other proceeding under the Code, if his evidence appears to it to be essential for the just decision of the case. It is further submitted that the trial Court in the concluding lines of para 6 of the impugned order has held that evidence of Ajmer Singh and Jaswant Kaur being parents of the complainant is very material and essential for the just decision of the present case, in the context of controversy involved. It is argued with vehemence that delay in filing the application, in the circumstances of the present case, is of no consequence. In addition, it is argued that if the impugned order is set aside, the same may lead to miscarriage of justice for failure of the prosecution to examine the material witnesses in order to prove culpability of the petitioner for the charged offence.

I have heard counsel for the parties, perused the paper-book particularly the impugned order.

Counsel for the State, in response to a query raised by the Court, has informed that Ajmer Singh and Jaswant Kaur parents of the complainant were cited as prosecution witnesses and their statements under Section 161 Cr.P.C. were recorded during course of investigation. The complainant has levelled allegations of harassment/ mal-treatment by the petitioner – husband in connection with demand of dowry and misappropriation of her dowry articles constituting offence under Sections 406 and 498-A IPC. There is no challenge to the findings of the trial Court that evidence of Ajmer Singh and Jaswant Kaur is material and essential for just decision of the case.

Once the legislation with an intent that justice should be done to the parties has empowered the trial Court to examine a witness at any stage of inquiry, trial or other proceeding, I find myself unable to be persuaded by the submissions made by counsel for the petitioner that the impugned order suffers from any error much less illegality warranting intervention in exercise of jurisdiction under Section 482 Cr.P.C.

For the foregoing reasons, the petition fails and is accordingly dismissed. However, the prosecution shall ensure presence of Ajmer Singh and Jaswant Kaur before the trial Court on the next date fixed i.e. 02.05.2017 and examination of both these witnesses in all respects would be completed by the Court without any further adjournment as the petitioner being the accused has the right of speedy trial.

APRIL 27, 2017

‘D. Gulati’

(REKHA MITTAL)

JUDGE

Whether speaking/reasoned :

yes/no

Whether reportable :

yes/no