

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

**CRM No.M-44208 of 2015
Decided on: 22.11.2017**

Jasbir Singh

....Petitioner

Versus

State of Haryana and others

....Respondent

CORAM: HON'BLE MR JUSTICE ARVIND SINGH SANGWAN

Present : Mr. Deepak Sharma, Advocate
for the petitioner.

Mr. Naveen Sheoran, DAG, Haryana.

Mr. R.K. Saini, Advocate for respondents No.2 to 10.

ARVIND SINGH SANGWAN, J.

Prayer in this petition is for setting-aside the order dated 17.12.2015 (Annexure P2) passed by the trial Court vide which the evidence of the prosecution was closed by Court order.

Brief facts of the case as per the allegations in the FIR are that on 17.11.2009, the respondent No.5 had a quarrel with the petitioner and later on , the matter was compromised. However, on the next day i.e. 18.11.2009, respondents No.5 and 7 caused injuries to the cousin brother of the petitioner namely Buta Singh and he was medico legally examined. Thereafter, a complaint was moved to the police, however, the police without taking action forced them to compromise the matter in the village. Again on the same day at about 08:00 PM all the private respondents/accused forcibly entered in the house of cousin brother of the petitioner namely Dilbagh Singh armed with sharp edged weapons like axe, swords, iron rods and sticks and attacked upon the

petitioner and his mother Smt. Amrit Kaur, his aunts, Smt. Pal Kaur and Smt. Jarnail Kaur, his sister-in-law Smt. Manjit Kaur, his uncle Sh. Gurdev Singh, his cousin brother Dalbir Singh and caused injuries to them. All of them were saved by the witnesses and thereafter, the police took all the injured persons to P.H.C. Naggal and from there, they were referred to the Civil Hospital, Amabla. Considering the serious conditions of Pal Kaur and Amrit Kaur, both of them were referred to the PGIMER, Chandigarh and in this regard FIR No.74 dated 19.11.2009 under Section 148, 149, 323, 452, 506 of the Indian Penal Code (in short 'IPC') was registered at Police Station Naggal, District Ambala.

After framing charges, the case was listed for prosecution evidence and vide impugned order dated 17.12.2015, the evidence of the prosecution was closed by Court order.

Counsel for the petitioner has challenged the aforesaid order dated 17.12.2015 on the ground that a perusal of all the interim orders reproduced in this petition show that on a number of occasions, the prosecution witnesses were present but counsel for the accused has obtained adjournments/dates for their cross-examination on one pretext or the other. Counsel for the petitioner has drawn the attention of the Court towards all the interim orders starting from the first date fixed for prosecution evidence i.e. 02.11.2010. It is further submitted that sometimes, the case was assigned to other Court or the Court was on leave and on some occasions on account of moving of miscellaneous applications, the case was adjourned.

It is further submitted that on few occasions, the

prosecution witnesses could not appear and the Court has issued bailable warrants and, therefore, there was no delay on the part of the complainant.

In reply, counsel for the respondents has submitted that the petitioners have availed number of opportunities and has failed to examine the 02 injured witnesses namely Pal Kaur and Amrit Kaur despite availing sufficient opportunities.

After hearing counsel for the parties, I find merit in the present petition. A perusal of all the interim orders show that on more than 5 – 6 occasions, the prosecution witnesses were present but their examination was deferred on the request made by counsel for the accused persons. It is also apparent that on one or two occasions, the case was transferred to other Court and sometimes, bailable warrants were issued against the witnesses who were not present. During pendency of the prosecution evidence, an application under Sections 216 Cr.P.C. for alteration of charge and 311 Cr.P.C. for recalling one witness namely Dr. Kiranmayi of PGIMER, Chandigarh was allowed and the case was again fixed for further evidence. It is also apparent that statement of some of the prosecution witnesses have not been completed as the cross-examination was deferred on account of non-availability of counsel for the accused persons.

Vide order dated 29.04.2015, the trial Court imposed the costs of Rs.1,000/- on accused person for non-examination of the witnesses namely Pal Kaur and Dilbagh Singh. Later on, the case was adjourned 07 – 08 times, however, the said costs of Rs.1,000/- was not paid by accused. The trial Court in the meantime has recorded the

statement of some prosecution witnesses and finally, the trial Court vide impugned order dated 17.12.2015, closed the evidence of the prosecution noticing the fact that costs of Rs.1,000/- was still not paid by the accused persons and no prosecution witnesses was present.

On a perusal of the interim orders passed by the trial Court, it is apparent that the delay in recording the prosecution evidence cannot be attributed to prosecution alone as the accused have also taken number of dates/adjournments despite the fact that the prosecution witnesses were present and the trial Court on request of accused person account did not record statements of prosecution witnesses. It is also apparent that when the case was adjourned for cross-examination of the prosecution witnesses on the request of counsel for the accused, costs of Rs.1,000/- was imposed which was not paid till passing of the impugned order. However, both witnesses Pal Kaur and Amrit Kaur are injured witnesses and are necessary witnesses.

In view of the above, the present petition is allowed, the order dated 17.12.2015 (Annexure P2) is set-aside and the trial Court is directed to provide one effective opportunity to the prosecution to conclude its entire evidence. It is made clear that the Investigating Officer shall ensure presence of the prosecution witnesses on the date given/fixed by the trial Court and the trial Court will record the complete statement of those witnesses on that date.

(ARVIND SINGH SANGWAN)
JUDGE

22.11.2017
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Whether speaking/reasoned	Yes/No
Whether reportable:	Yes/No