

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

CRL. MISC. No.M-4622 OF 2017
DATE OF DECISION : 22nd MARCH, 2017

Jaspal Singh & another

.... Petitioners

Versus

State of Punjab & another

.... Respondents

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

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Present : Mr. Charanjit Singh Bakshi, Advocate for the petitioners.

Mr. Daljeet Singh Virk, DAG, Punjab.

Mr. Mohit Garg, Advocate for respondent No.2.

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A. B. CHAUDHARI, J.

This is petition for transfer of trial in FIR No.276 dated 01.12.2008 registered under Sections 307/34 IPC; 25 Arms Act at Police Station City, Sangrur and the cross version under Section 307, 427, 148, 149 and 25 Arms Act at Police Station City, Sangrur, from the Court at Sangrur to any other District.

The petitioner had filed a petition CRM-M-No.21743 of 2011 and the following order was passed in that petition:

It is stated by the learned State counsel on instructions from ASI Raghvinder Singh that the matter regarding transfer of which the petitioner seeks is fixed for disposal today itself. If that be so,

then I am of the considered view that the proceedings which are now at the fag end need not be shifted out.

In view of above, instant petition is disposed of with a direction to the learned Trial Court to proceed with the matter unhindered.

May 05, 2015

(Mahesh Grover)
Judge”

The reasons given in the order are clear that the Court was not inclined to interfere while making any order of transfer as the trial was almost at the fag end.

This is second petition for the same relief. Learned counsel for the petitioner contended that there is a considerable delay that has caused in progress of the trial and, therefore, the trial should be shifted.

The main submission is that the application under Section 311 Cr.P.C. was kept pending for over a year by giving number of dates.

This Court had passed order dated February 13, 2017 when it had found that the application under Section 311 Cr.P.C. was kept pending for no reason. The order dated February 13, 2017 is reproduced below:

“Notice of motion returnable on 17.02.2017.

Mr. Mohit Garg, Advocate appears and accepts notice on behalf of respondent No.2. Heard learned counsel for rival parties.

Inviting my attention to the zimni orders and in particular, the relevant zimni order dated 18.05.2015, I find that the Sessions trial was

adjourned for arguments/remaining arguments from time to time earlier to 18.05.2015. On 18.05.2015, Additional P.P. filed application under Section 311 of Code of Criminal Procedure, 1973 (for short 'Cr. P.C.') for summoning ASI Harbans Singh on which notice was issued to the counsel for the accused and reply was filed on 26.05.2015 by the accused and thereafter, the case was adjourned to 04.06.2015 for consideration.

I have perused the application itself. It shows that ASI Harbans Singh, Police Station City Sangrur was to be recalled for proving FIR, i.e. FIR No.276 dated 01.12.2008. The application was obviously filed on 18.05.2015. All the zimni orders thereafter, show that the said application under Section 311 Cr. P.C. (Annexure P-9) has yet not been decided and the last zimni order dated 24.01.2017 shows posting of application under Section 311 Cr. P.C. for consideration today, i.e. 13.02.2017.

FIR No.276 dated 01.12.2008, prima-facie, in my opinion, must have been proved by the complainant in his examination-in-chief. The application shows that ASI Harbans Singh was to be recalled only for proving FIR. At the most, he could be an additional witness to prove the FIR. Be that as it may, the application is pending since 18.05.2015

and even today, the same is again fixed for consideration of the said application. The petitioner-accused have been making allegations against respondent No.2, i.e. the President of District Bar Association, Sangrur while counsel for respondent No.2, before me, submits that it is not so. Neither the Sessions Court nor this Court is concerned with the status of the parties and the Court was required to decide the application under Section 311 Cr. P.C. expeditiously. It is not possible to fathom as to why from 18.05.2015 till date the application has not been decided as the responsibility to decide the application was on the Court and once the application was filed, it was for the Court to decide the application accordingly.

In that view of the matter, learned Additional Sessions Judge, Sangrur is directed to decide the application under Section 311 Cr. P.C. in any case on or before 16.02.2017 either by hearing the arguments today itself or on tomorrow and also make report to this Court as to why the application was not decided from the date of its filing till date. The report be submitted to this Court on 17.02.2017 by fax. Office is directed to send this order to the learned Additional Sessions Judge, Sangrur by fax.”

Pursuant to the aforesaid order the trial Court decided the said application and rejected the same and thereafter proceeded to continue the trial. The petitioner filed one more application making allegations about the happenings in the Court before the Sessions Court. This Court found necessary to have the say of the Presiding Officer. This Court therefore, called the report from the Presiding Officer, who as per the said report has denied the happening as alleged in the application. I have no reason to discard or disagree with the same.

The fact now remains that the trial is completed and is fixed for arguments. I do not think that any purpose would be served by making the order of transfer, particularly in the light of the earlier order that was made by this Court, refusing to transfer this case.

In the result, CRL. MISC. No.M-4622 OF 2017 is dismissed.

22nd March, 2017
'raj'

(A. B. CHAUDHARI)
JUDGE

<i>Whether speaking/reasoned</i>	:	<i>Yes</i>	<i>No</i>
<i>Whether Reportable</i>	:	<i>Yes</i>	<i>No.</i>