

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

CRR-685-2016 (O&M)

Date of decision: - 6.9.2017

Jagdev Kaur

.....Petitioner

versus

State of U.T. Administration and others

.....Respondents

CORAM: - HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: - Mr. Vinay Kumar Gupta, Advocate for the petitioner.

ARVIND SINGH SANGWAN, J (ORAL)

Challenge in the present petition is to the order dated 30.11.2013, passed by the trial Court acquitting the respondents-accused in FIR No. 393 dated 18.12.2002, under Section 419, 420, 467, 468, 471 and 120-B IPC as well as the judgment dated 23.10.2015 passed by the lower Appellate Court, dismissing the two appeals filed by the present petitioner-complainant.

Brief facts of the case are that petitioner-complainant registered the aforesaid FIR on the allegation that the respondents-accused in criminal conspiracy has manipulated and forged the General Power of Attorney by forging the signatures of petitioner-complainant; they have also manipulated an agreement to sell dated 14.8.1996 and subsequently, have also forged and fabricated a Will regarding one shop-cum-flat owned by petitioner-complainant. After the challan was submitted, respondents-accused were charge-sheeted under Sections 419, 420, 467, 468, 471 read with Section 120-B IPC vide order dated 5.12.2011. However, prosecution as well as the present petitioner-complainant failed to examine any prosecution witness and the trial Court, after noticing that

several opportunities have been availed by the prosecution to conclude the evidence and also that despite last opportunity granted by the trial Court with a notice to SSP, Chandigarh, prosecution has failed to examine a single prosecution witness as such evidence of the prosecution was closed by the Court order. Subsequent to closing of prosecution evidence, procedure for recording the statements of the respondents-accused under Section 313 was dispensed with.

After hearing learned counsel for the parties, trial Court vide its judgment dated 30.11.2013, acquitted the respondents-accused.

Petitioner-complainant filed a criminal Appeal No. 336 dated 10.3.2014, impleading respondents-Hakam Singh, Surjeet Kaur, Charanjit Singh and Manpreet Singh as accused. Later on, another criminal Appeal No. 337 of 2015 was filed against the co-accused, P.D. Sood with the averments that inadvertently, his name was not added in the first appeal.

Learned Appellate Court while dismissing both the appeals have recorded the following findings: -

“In the case in hand which was instituted initially on the complaint of complainant as moved under Section 156 (3) Cr. P.C. and on that basis order was passed for registration of case. After registration of case and completion of investigation challan in this case was presented on 25.5.2005. After procuring presence of accused and disposal of various applications ultimately the learned trial Court vide order dated 5.12.2011 has framed charge against all the accused for offences punishable under Sections 419, 429, 467, 468, 471 and 120-B IPC. Thereafter, prosecution was given numerous opportunities to lead evidence. In this regard prosecution has examined Lalit Kumar Virmani, Chief Manager, United Bank of India as PW-1 and H.C. Bijinder Singh as PW-2 and no other evidence has been brought on record. Although, it is argued by counsel for appellant that complainant has come present time and again but it is not fact on record as prosecution has failed to examine her. Even her examination in chief has not been recorded. At no stage, complainant or any of her representative has brought it to the notice of learned trial

Court for examining her as a witness of prosecution. The learned trial Court has given various opportunities and even last opportunity and summons have been issued through office of SSP, Chandigarh. Ultimately, when prosecution has failed to serve any other witness and examine any other witness, the learned trial Court has closed the evidence by order. Although in the judgment, the learned trial Court has mentioned that no evidence has been recorded but in the zimni itself it is written that no incriminating evidence on record, as such recording of statement of accused under Section 313 Cr. P.C. was dispensed with. Perhaps it is inadvertent and over site mistake of learned trial Court by mentioning this fact in the judgment, otherwise, both these witnesses, PW-1 and PW-2 who are formal witnesses and have nothing to do with the material evidence which can be termed as incriminating against the accused. The learned trial Court has rightly dispensed with statement of accused under Section 313 as no incriminating evidence has come on record. For number of year the prosecution has tried to bring the witnesses but failed to examine any material witness. In considered view of this Court, the learned trial Court has rightly closed the evidence by order as speedy trial is also one of the right of the accused persons. It is not the spirit of law and criminal jurisprudence to keep any criminal case pending for indefinite period. The only requirement is that Court shall provide sufficient number of opportunities to the prosecution for concluding the evidence. In the case in hand sufficient number of opportunities have been given and learned trial Court has rightly closed the evidence and rightly acquitted all the accused for want of evidence against them. There is no legal infirmity in the judgment of learned trial Court. I affirm the findings of the learned trial Court. There is no merit in both the appeals. So, same are hereby dismissed. However, respondents are directed to furnish bail bonds in the sum of ₹ 10,000/- each with one surety in the like amount, in terms of Section 437-A, Cr. P.C. Copy of this judgment be placed on the file of Criminal Appeal No. 337 of 2015 titled Jagdev Kaur vs. P.D. Sood. Record of trial Court be sent back along with copy of this judgment. Appeals filed be consigned to the record room.”

Learned counsel for the petitioner further submits that petitioner be granted one opportunity to lead evidence. However, a perusal of the order

dated 30.11.2013 passed by the trial Court would show that once, the prosecution evidence was closed, neither the respondent-State nor the petitioner challenged the aforesaid order of closing the evidence, by way of filing a revision petition. Even when an appeal was filed no application was moved under Section 391 Cr. P.C. for leading any additional evidence.

In view of above, I do not find any merit in the present petition.

Dismissed.

(ARVIND SINGH SANGWAN)
JUDGE

6.9.2017
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Whether speaking/reasoned
Whether Reportable

Yes/No
Yes/No