

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

**CRR No.2375 of 2017 (O&M)
Date of Decision: July 12, 2017**

Buta Singh

...Petitioner

VERSUS

State of Punjab and others

...Respondents

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Rajdeep Singh Chugh, Advocate
for the petitioner.

INDERJIT SINGH, J.

The present revision has been filed by the petitioner Buta Singh against State of Punjab and other respondents, challenging the impugned order dated 01.06.2017 passed by learned Judicial Magistrate Ist Class, Ludhiana, vide which the application filed by the prosecution under Section 311 Cr.P.C. for recalling/calling the prosecution witnesses was dismissed.

I have heard learned counsel for the petitioner and have gone through the record.

From the record, I find that during the trial, an application has been filed by the prosecution under Section 311 Cr.P.C. for recalling/calling the prosecution witnesses. After hearing learned counsel for the parties, learned JMIC, Ludhiana, dismissed the application. Learned Magistrate, after discussing the facts, has observed as under:-

26.05.16 his cross-examination was deferred on the request of Ld. Counsel for the accused. After that he appeared on 16.07.16 but again he was not cross-examined. After 16.07.16, nine times the case was adjourned for prosecution evidence but he has not appeared for getting himself examined. Further perusal of the case file shows that 3 times summons were issued to the witness including NBW but he has not appeared before the court for getting himself cross-examined. So far as the other witness Pw Balbir Singh concerned. He was examined on 05.03.16 and further cross-examined on 23.09.16. Perusal of the zimni order shows that since 23.09.16, five opportunities were given to the prosecution but he has not appeared even issuing NBWs. Similarly 14 times summons including warrants were issued to witness Jasjeet Singh but he has not come present for witness. Besides this the period of more than 3½ years was given to prosecution to conclude its evidence. Furthermore, 32 effective opportunities were given to the prosecution to conclude its entire evidence but the prosecution has been failed. The present application is filed just to delay the proceedings in the present case. Therefore, the present application is devoid of merits and is hereby dismissed.”

As the evidence has already been closed by Court order and further adjournment has been declined, therefore, that order cannot be set aside by filing application under Section 311 Cr.P.C. For acceptance of this application, the prosecution was to show as to why it could not complete the evidence in 32 effective opportunities, which lasted for 3½ years. The Court is to maintain balance between the prosecution and the defence side. The accused cannot be harassed by the conduct of the prosecution witnesses.

From the perusal of the findings given by learned JMJC, Ludhiana, I find that the evidence has been rightly closed by Court order. Secondly, in the revision petition, the order vide which the evidence has been closed, has not been challenged by the petitioner. Otherwise also, there is nothing on the record to explain as to why the prosecution has not completed its evidence in 3½ years in 32 effective opportunities.

In view of the above discussion, I find that impugned order dated 01.06.2017 passed by learned JMIC, Ludhiana, is correct, as per law and does not require any interference from this Court.

Therefore, finding no merit in the present revision petition, the same is dismissed.

July 12, 2017
Vgulati

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned	Yes
Whether reportable	No