

IN THE HIGH COURT OF PUNJAB AND HARYANA AT  
CHANDIGARH

CRM-M-12803-2018 (O&M)

Date of Decision: 31.07.2018

Hardip Singh

...Petitioner

vs.

State of Punjab and Ors

..Respondents

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

Present: Mr. G.S.Sirphikhi, Advocate, for the petitioner.

Mr. M.S.Nagra, AAG, Punjab.

Mr. Ritesh Pandey, Advocate, for respondent No.2.

Mr. G.S.Bal, Sr. Advocate with  
Ms. Manjit Kaur, Advocate, for respondent No.3.

**ARVIND SINGH SANGWAN,J:**

Prayer in this petition is for setting aside the order dated 05.01.2018 (Annexure P13) passed by the Sub-Divisional Judicial Magistrate, Batala, vide which the application filed by the petitioner under Section 311 Cr.P.C. has been dismissed.

Brief facts of the case are that the petitioner has filed an application under Section 311Cr.P.C. for summoning of official In-charge of Finger Print Bureau, Phillaur as substitute to the prosecution witness, namely, Gurmit Singh as he had retired from service and the other witness has settled abroad. The application filed by the petitioner was opposed by the accused persons on the ground that charges were framed against them on 25.10.2013 and, thereafter, many opportunities were granted to the prosecution to conclude its evidence and finally it was closed by order vide order dated 05.08.2015.

It would be relevant to mention here that prior to passing of this order, the prosecution was granted last opportunity and the petitioner has

also moved an application under Section 311 Cr.P.C. which was allowed vide order dated 05.08.2015 (Annexure P3) and some witnesses were ordered to be summoned and examined. Since the service of the summons could not be effected, the petitioner filed a petition bearing CRR-3255-2015 which was allowed vide order dated 29.03.2016 (Annexure P6) granting one more opportunity to the prosecution to take *dasti* summons of all the witnesses and produce them before the Court without any further delay. It was also observed in the order that no further opportunity shall be granted.

Counsel for the petitioner submits that the petitioner has examined as many as 08 prosecution witnesses and, thereafter, the trial Court vide order dated 29.08.2016 fixed the case for recording the statement of accused under Section 313 Cr.P.C. Thereafter, the petitioner filed second petition i.e. CRR-3465-2016 and prayed for one more opportunity to examine two prosecution witnesses i.e. Inspector Gurmit Singh, In-charge Finger Print Bureau Phillaur and one Kulwant Singh, PPS, Deputy Superintendent of Police (D) Batala, as it had come in the report of the process server that the address of Gurmit Singh was not known and Kulwant Singh was served through message on his mobile phone and thus the order, again closing the prosecution evidence, was not legally sustainable. The said petition was allowed vide order dated 30.08.2017 and again one more opportunity was granted to the prosecution to examine the aforesaid witnesses.

Counsel for the petitioner further submits that the petitioner has moved an application under Section 311 Cr.P.C. for summoning the witness i.e official In-charge, Finger Print Bureau, Phillaur as substitute of witness

Gurmit Singh.

The accused persons have contested the said application on the ground that the complainant/petitioner has already availed one more opportunity to lead his evidence. When the case was fixed for prosecution evidence, no such application was moved. Thereafter, the trial Court, vide order dated 05.01.2018 (Annexure P13), dismissed the application of the petitioner and fixed the case for defence evidence, as the statements of accused were already recorded under Section 313 Cr.P.C.

Counsel for the petitioner has further argued that since a report has come on the summons of the witnesses that Gurmit Singh has retired, therefore, the application was filed for substituting the witness with another witness of the Finger Print Bureau, Phillaur and since, Kulwant Singh, retired DSP has gone abroad, one more opportunity be granted to the petitioner to effect service on him.

In reply, learned senior counsel has opposed the prayer of the petitioner on the ground that the case was fixed for prosecution evidence in the year 2013 and till 2015, the petitioner has availed number of opportunities and vide order dated 19.08.2015 (Annexure P4), the evidence of the prosecution was closed noticing that the case pertains to the year 2009. Thereafter, the petitioner filed first petition bearing CRR-3255-2015, vide which he was granted one more opportunity to lead his entire evidence and in pursuance thereof, the petitioner has already examined 08 prosecution witnesses and at that stage, he never moved any application for substituting the prosecution witness. He further argued that when the prosecution evidence was closed for second time on 29.08.2016, the petitioner again filed second petition bearing CRR-3465-2016 and in that

petition, no such prayer was made that instead of Gurmit Singh, some other prosecution witness be examined and rather main thrust of the petitioner was that one opportunity be granted to him to examine the aforesaid two witnesses i.e. Gurmit Singh and Kulwant Singh. Senior counsel further argued that the said petition was also allowed and again trial Court has granted one more opportunity to the petitioner and only, thereafter, the petitioner has filed application under Section 311 Cr.P.C. for substituting the witness.

Learned Senior counsel has otherwise further argued that even otherwise the report of Finger Print Bureau, Phillaur can be considered by the trial Court as per provisions of Section 293 Cr.P.C. without even recording the statement of Gurmit Singh, it being report by Government Scientific Expert. He further argued that the other witness i.e Kulwant Singh has settled abroad and never returned back to India, therefore, there is no possibility for effecting service upon him as for the last five years, the prosecution has failed to procure his presence and prayed for dismissal of the present petition.

Learned State counsel submits that the defence evidence was closed by the accused persons and the case is now fixed for final arguments.

After hearing learned counsel for the parties, I find no merit in the present petition for the following reasons:-

a. Admittedly, the case was fixed for prosecution evidence for the first time on 25.10.2013; after charges were framed and till 05.08.2015, no prosecution witness was produced when the evidence was closed for the first time;

b. The petitioner knew the status of abovesaid two

witnesses even on that day and never made any such request when he filed the first petition bearing CRR-3255-2016. It is also matter of record that subsequent to passing of the order dated 29.03.2016 deciding the said revision petition, the petitioner has examined 08 prosecution witnesses and his evidence was again closed vide order dated 29.08.2016 and in the intervening period, he never moved any application for substitution.

c. It is also matter of record that when the petitioner filed second revision petition bearing CRR-3465-2016, no such request was made and the petitioner rather prayed that one more opportunity be granted to him to examine the aforesaid two witnesses. The trial Court has granted one more opportunity to the petitioner and having failed to inform the Court about their addresses for effecting service, the trial Court dismissed the application under Section 311 Cr.P.C. and also closed the evidence vide impugned order dated 05.01.2018.

Therefore, considering the fact that the case was fixed for prosecution evidence in the year 2013 and in the intervening period, sufficient opportunities were granted to the prosecution to lead its evidence and on two occasions, this Court has also granted one more opportunity to lead evidence, despite that the petitioner has failed to produce the aforesaid two witnesses, the trial Court has rightly dismissed the application.

Needless to say that it will be open for the trial Court to look into the report in the light of provisions of Section 293 Cr.P.C. Therefore, finding no illegality in the impugned order dated 05.01.2018 (Annexure P13), the present petition is dismissed.

31.07.2018  
smriti

(ARVIND SINGH SANGWAN)  
JUDGE

Whether speaking/reasoned : Yes/No.  
Whether Reportable : Yes/No