

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

204

CRM-M-24129-2017

Date of Decision:21.09.2018

Jaibir

.....Petitioner

Versus

State of Haryana and another

.....Respondents

CORAM: HON'BLE MR.JUSTICE HARI PAL VERMA.

**Present: Mr. Vikas Kumar, Advocate,
for the petitioner.**

Mr. Anmol Malik, A.A.G., Haryana.

**Mr. Anil Kumar Rana, Advocate,
for respondent No.2.**

HARI PAL VERMA, J.(Oral)

Prayer in this petition filed under Section 482 Cr.P.C. is to quash the order dated 06.06.2017 (Annexure P-1) passed by learned Judicial Magistrate 1st Class, Faridabad, whereby the trial Court has closed the prosecution evidence for non-appearance of PWs, namely, SI Virender Singh and SI Vijay Kumar by way of Court order.

Learned counsel for the petitioner has argued that non-examination of PWs-SI Virender Singh and SI Vijay Kumar as well as PW Bhagwati, is causing great prejudice to the petitioner-complainant. Moreover, the complainant is not at fault. Summons issued to PWs-SI Virender Singh and SI Vijay Kumar were received back duly served, but they were not present and accordingly, the Court had issued bailable warrants in the sum of Rs.5,000/- each with one surety in the like amount.

He has further argued since that the petitioner is not at fault, the Court

should have adopted a rational and coercive method so as to ensure their presence for evidence.

On the other hand, learned counsel for respondent No.2-accused has argued that ample opportunities have already been granted, but the petitioner has failed to conclude his evidence. Despite having been granted last opportunity, these witnesses were not examined. Therefore, there is no illegality in the order dated 06.06.2017 passed by the trial Court.

I have heard learned counsel for the parties.

The orders dated 05.05.2017, 19.05.2017 and the impugned order dated 06.06.2017 passed by learned Judicial Magistrate 1st Class, Faridabad, read as under:-

Order dated 05.05.2017

“No PW is present. Summons issued to PWs SI Virender Singh and Vijay Kumar received back through served. Despite service, they are not present. Let, they be summoned throughailable warrants in the sum of Rs.5,000/- each with one surety in the like amount. Summons be also issued to PW Bhagwati. Let, the matter be now listed for 19.05.2017 for prosecution evidence.

It shall be last opportunity.”

Order dated 19.05.2017

“No PW is present.ailable warrants issued against PWs SI Virender Singh and Vijay Kumar not received back either served or unserved. Let, they be again summoned throughailable warrants in the sum of Rs.5,000/- each with one surety in the like amount. Let, the matter be now listed for 06.06.2017 for prosecution evidence.

Last opportunity will continue.”

Order dated 06.06.2017

“No PW is present. It was the last opportunity. Prosecution has already been availed several effective opportunities. No further adjournment sought. So, prosecution evidence is hereby closed by court order.

Thereafter, statement of accused under section 313 of Cr.P.C. recorded. Let, the matter be now listed for 04.07.2017 for defence evidence, if any otherwise for arguments.”

The perusal of the aforesaid orders reveals that for non-appearance on the part of PWs, namely, SI Virender Singh and SI Vijay Kumar as well as PW-Bhagwati, the Court was constrained to issueailable warrants but still the witnesses have not appeared. In this manner, no fault can be attributed to the petitioner and it was for the Court to invoke the legal mechanism so as to examine those witnesses while ensuring their presence as provided in Chapter VI of the Code of Criminal Procedure.

Accordingly, this Court finds that order dated 06.06.2017 (Annexure P-1) passed by learned Judicial Magistrate 1st Class, Faridabad, is not sustainable and is lacking legal sanctity. Therefore, order dated 06.06.2017 (Annexure P-1) is hereby quashed. The trial Court shall put into motion the mechanism, as provided under Chapter VI of the Code of Criminal Procedure so that the witnesses, namely, SI Virender Singh, SI Vijay Kumar and PW-Bhagwati as sought by the prosecution be examined in the case.

The present petition is disposed of accordingly.

September 21, 2018
seema

(HARI PAL VERMA)
JUDGE

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No