

Sr. No.127

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

**CRM-M-31450-2018
Date of decision:26.07.2018**

Surinder Kumar

.....Petitioner

versus

State of Punjab and others

.....Respondents

Coram: HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

Present: Mr. Ashok Kumar Khunger, Advocate
for the petitioner.

Rajbir Sehrawat, J(Oral)

Present petition has been filed for quashing the Order dated 20.07.2018(Annexure P-8) passed by the learned Judicial Magistrate Ist Class, Abohar whereby the pre-charge evidence of the petitioner/complainant has been closed.

Learned counsel for the petitioner submits that although the complaint is of the year 2012, however, proceedings in the matter were not progressing further, because the application for consolidation of the cross complaint case, which has been filed by the accused of the present complaint, was pending before the Chief Judicial Magistrate. Ultimately the consolidation of the two trials was ordered vide Order dated 05.12.2017. Number of effective opportunities referred to by the Trial Court in the impugned order, were the formal opportunities which were granted before consolidation of the two trials. So far as the time after consolidation of the two trials is concerned, the petitioner has not shown any laxity towards leading the evidence. Hence the prayer is made for grant of opportunity to the petitioner.

A perusal of the file shows that on 19.07.2018, two witnesses of the complainant were present. However, application was moved on behalf of the accused for exemption and the same was allowed. Cross-examination of the witness of the petitioner was deferred on request of counsel for the accused.

On the same day, the Trial Court had ordered the complainant to take dasti summons for one more witness i.e. Dr. Kunal Bansal and to produce this witness at own responsibility on 20.07.2018, the next day.

The application moved by the petitioner before the Trial Court on 20.07.2018 shows that the said witness Dr. Kunal Bansal was posted at a distant place, which is about 165 kms away from the seat of Trial Court. More over, the said Doctor is a government employee and unless served through proper channel, was not likely to come to the Court. This would have taken some time, therefore, the petitioner had made a request for issuance of fresh summons. However, that application was declined and pre-charge evidence of the complainant was closed.

The above said facts, make it clear that after the start of the evidence, the complainant has not shown any inordinate laxity in leading the evidence. Rather he is taking appropriate steps for completion of pre-charge evidence. On 19.07.2018, two witnesses were present. However, their cross-examination was deferred on the request of the accused. On 20.07.2018 again both those witnesses were present and were cross-examined. Only witness which remains to be examined by the present petitioner is above said Dr. Kunal Bansal, who admittedly; is a government employee and posted at the distant place. In that situation, it would not have been reasonably expected from the complainant to take dasti summon

on 19th and to bring him to the Court at his own responsibility on 20.07.2018. Therefore, request of the petitioner for granting a little bit more time is justified.

In view of the above, the present petition is allowed and the Order dated 20.07.2018(Annexure P-8) is set aside. The Trial Court is directed to grant one more opportunity to the petitioner to examine the witnesses. The Court shall grant opportunity by issuing the summon for the said witness, or any other witness, for a date as deem fit by the Trial Court, but giving a reasonable time to the petitioner to serve the witnesses.

26th July, 2018

Shivani Kaushik

**[RAJBIR SEHRAWAT]
JUDGE**

Whether speaking/reasoned *Yes*

Whether Reportable *Yes*