

In the High Court of Punjab & Haryana at Chandigarh.

CRM-M-33100-2017

Date of decision: 20.02.2018

Sher Singh

..... Petitioner.

vs.

State of Haryana and Ors.

..... Respondents.

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: Mr. Akash Vashisth, Advocate,
for the petitioner.

Ms. Harpreet Kaur, AAG, Haryana.

None for respondents No. 2 to 9.

ARVIND SINGH SANGWAN,J.(ORAL)

Prayer in this petition is for setting aside the order dated 21.08.2017 (Annexure P5) passed by the trial Court, vide which the prosecution evidence was closed by court order in a criminal case arising out of FIR No.169 dated 27.05.2012, under Sections 148/149/323/439/427/447/511 and 506 IPC, registered at Police Station Indri, District Karnal.

Counsel for the petitioner submits that as per report submitted under Section 173 Cr.P.C., 17 prosecution witnesses were cited by the Investigating Officer and 2 witnesses at serial No. 11 and 12 are Bal Kisan and Bir Singh, who are injured and eye witnesses. Counsel further submits that though sufficient opportunities were granted to the prosecution, however, considering the fact that the entire prosecution case is based on statements of these two witnesses being injured as well as eye witnesses, the trial Court has not afforded proper opportunity to record their statements, as

perusal of the last few orders passed immediately before passing of the impugned order dated 21.08.2017 shows that the Court had issued summons/bailable warrants against other prosecution witnesses, some of whom were official witnesses.

In pursuance to the notice of motion, no one has appeared on behalf of respondents No. 2 to 9-accused persons despite service.

Reply by way of affidavit of DSP, Indri, District Karnal, on behalf of respondent No.1-State has already been filed and as per the same, in aforesaid FIR, respondents No. 2 to 9 are facing trial. It is further submitted in the reply that statements of seven prosecution witnesses, namely, Sher Singh, Ajaib Singh, Dr. Jasvinder Kaur, Dr. Deepak Gupta, Dr. Sarita Bisnoi, SI Kashmira Singh and Deepender Singh, have already been recorded.

The fact that Bal Kisan and Bir Singh are the injured and eye witnesses is admitted in this affidavit being a matter of record.

It is also prayed in the affidavit of DSP that the police has no objection in case order dated 21.08.2017 is set aside, as per Para No. 6 of the reply.

After hearing learned counsel for the parties and specially in view of the fact that there is no representation on behalf of respondents no. 2 to 9-accused persons; in view of the affidavit filed by DSP, that there is no objection to the prayer made by the petitioner and also in view the fact that both the witnesses, namely, Bal Kisan and Bir Singh were cited as prosecution witnesses in the challan/report under Section 173 Cr.P.C. as injured/eye witnesses, this petition is allowed and the petitioner is granted one effective opportunity to record the statement of aforesaid two witnesses

subject to payment of costs of ₹5,000/- to be deposited with the District Legal Services Authority, Karnal for causing delay in the decision of the case.

The petitioner is directed to appear before the trial Court on 01.03.2018 and the trial Court will fix the date for recording the statements of aforesaid two prosecution witnesses.

20.02.2018
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(ARVIND SINGH SANGWAN)
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No