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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-41066-2015

Date of Decision : November 21, 2018

Gian Chand

.... Petitioner

Versus

State of Haryana and others

.... Respondents

CORAM : HON'BLE MR. JUSTICE SHEKHER DHAWAN.

Present Mr. Namit Khurana, Advocate,
for the petitioner.

Mr. Neeraj Poswal, DAG, Haryana
for the respondent-State.

Mr. Sunil K. Nehra, Advocate,
for respondents No. 3, 4 and 6 to 9.

SHEKHER DHAWAN, J.

Present petition under Section 482 of the Code of Criminal Procedure for quashing of order dated 7.10.2015 (Annexure P/2) and 17.11.2015 (Annexure P/4) passed by Judicial Magistrate Ist Class, Yamuna Nagar in Criminal Case No. 142 of 1.6.2011 in case bearing FIR No. 39 dated 1.3.2011 registered under Sections 148, 149, 323, 324, 427, 435, 452 and 506 of IPC at Police Station Radaur, District Yamuna Nagar, whereby evidence of the prosecution was closed by Court order and application under Section 311 Cr. P.C. filed by the petitioner was

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dismissed.

2. As per the petitioner, the above mentioned FIR was got registered by the petitioner against accused persons and the matter was pending before learned JMJC, Yamuna Nagar. During the course of trial, learned trial Court closed the prosecution evidence on 7.10.2015 and fixed the case for recording statement of accused persons under Section 313 Cr.P.C. Thereafter, an application under Section 311 Cr. P.C. was filed to examine complainant, Gian Chand, injured Surjit Kumar and Dr. Rahul Bhalla and specialist doctor with opinion and that application was dismissed vide order dated 17.11.2015 and the same are liable to be set-aside.

3. Private respondents/accused persons have contested this petition on the ground that the prosecution evidence was closed after giving more than reasonable opportunity as the Prosecution had already availed 19 adjournments and even last opportunity was granted by the Court below for that purpose. The prosecution had already availed so many effective adjournments to conclude the evidence, but it failed to do so. On 7.10.2015 itself, the complainant and the witnesses were not present even after repeated calls. As such, the prosecution evidence was closed and thereafter application under Section 311 Cr.P.C. was dismissed.

4. Learned counsel representing the private respondents contended that the remedy against the orders under challenge is by way of revision before the Court of Sessions and not under Section 482 Cr.P.C. On this point, reliance was placed upon the judgment of Hon`ble Apex Court in **Mohit @ Sonu and another Vs. State of U.P. and another,**

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2013 (3) R.C.R. (Criminal) 673.

5. For the purpose of decision of this petition, the two orders having been passed by the Court below on 7.10.2015 are most relevant.

The same are extracted below :-

“Present: Ms. Vandana, APP for the State assisted by Sh. Kanwardeep Singh, Advocate for complainant.

Accused Satbir on bail in this case but in custody in some other case.

Proceedings against accused Niranjana dropped.

Accused Naresh Kumar and Jaswinder not present.

Remaining accused on bail represented by Sh.S.P. Dhanda, Advocate.

An application for exemption from personal appearance of accused Naresh Kumar and Jaswinder moved. Heard. In view of the facts mentioned in the application, personal appearance of accused is hereby exempted for today only.

PW5 Dr. Ashutosh, PW6 Insp. Harvinder Singh, PW7 ASI Gurbaksh Singh and PW8 Jaswinder have been examined. No other PW is present. Keeping in view the statement of ASI Gurbaksh Singh Ld. APP for the State has given up PW EASI Dal Singh being unnecessary by making separate statement.

Perusal of the case file reveals that the prosecution has availed so many effective opportunities to conclude that evidence but has failed to conclude its evidence. Complainant or his witnesses are not present till 3:40 p.m. even after repeated calls. None has appeared on behalf of complainant. In view of the order dated 22.09.2015 the evidence of the prosecution is hereby closed by court order. Now, to come up on 14.10.2015 for recording the statement of

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accused under Section 313 Cr.P.C.

Typed by:-
Bhagirath Sharma (steno)

(Vinti)
JMIC/ 07.10.2015
Time 3:40 P.M.

Present:- Sh. Kanwardeep Singh, Advocate for complainant.

At this stage, Ld. Counsel for complainant appeared before the court and filed two separate application for making the presence of the complainant and another application for permission to cross-examine the witness Jaswinder. Now, to come up on the date fixed for filing reply to these applications.

Typed by:-
Bhagirath Sharma (steno)

(Vinti)
JMIC/ 07.10.2015
Time 4:00 P.M.”

6. The above orders would reveal that on the date fixed, i.e. 7.10.2015, the prosecution evidence was closed as no other witness was present despite last opportunity. However, on the same date, in another order, it has been mentioned that after adjournment of the case, complainant, who is the material witness of the case, was present in the Court and he had moved application to cross-examine witness, Jaswinder. The second order itself establishes that the complainant, who was the material witness, was present in the Court on the said date.

7. During the pendency of this petition, vide order dated 4.12.2015, learned counsel for the petitioner was directed to place on record all the zimni orders and in compliance thereof, the petitioner

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produced copies of zimni orders passed by the Trial Court from 3.11.2012 to 22.9.2015 as Annexure P/7. The same have been perused by this Court. Perusal of the said orders would establish that on all most all the dates, proceedings were being adjourned as one or the other accused was not present and application for their exemption from personal appearance were filed and same were allowed by the trial Court. On two different dates, the examination-in-chief of the witnesses were recorded and their cross-examination was deferred on account of requests having been made by learned defence counsel. As such, the delay in disposal of the matter and non-examination of the material witnesses cannot be attributed to the present petitioner, who is complainant in the matter and also looking for the verdict of the Court right from the day one. More so, on the date fixed, i.e. 7.10.2015, the petitioner was present and his presence has been recorded by the Court below though after passing of the first order on the same date. Needless to mention that the examination of the complainant, injured as well as Medical Officer is most relevant for the decision of the case and learned trial Court has completely ignored this fact.

8. The Court has also gone through the judgment referred to and relied upon by learned counsel for the private respondents in **Mohit @ Sonu's case (supra)**. However, the above detailed facts do make out a case that this Court under Section 482 Cr.P.C. certainly has the power to interfere and set-aside the impugned orders. Accordingly, the impugned orders dated 7.10.2015 and subsequent order dated 17.11.2015, whereby application under Section 311 Cr.P.C. was dismissed, are set-aside and prosecution is given one more opportunity to conclude the evidence.

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However, it is made clear that on the date fixed for the purpose by learned trial Judge, the complainant as well as private witness shall remain present in the Court and the summons of official witness i.e. Medical Officer shall be issued by the Court below and the Court shall ensure the presence of the said witnesses for recording their statements and no further adjournment shall be given beyond that date.

9. The present petition stands allowed in the above terms.

**(SHEKHER DHAWAN)
JUDGE**

November 21 ,2018

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Whether speaking/reasoned?	:	Yes
Whether reportable?	:	Yes