

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

CRM-M-45790-2016

Date of Decision: 24.07.2018

Ajaib Singh

... Petitioner

Vs.

State of Punjab and others

... Respondents

CORAM : HON'BLE MR. JUSTICE P.B. BAJANTHRI

Present : Mr. L.S. Sidhu, Advocate
for the petitioner.

Mr. Luvinder Sofat, A.A.G. Punjab.

Mr. N.S. Dandiwal, Advocate
for respondents No.2, 4 to 6.

P.B. BAJANTHRI J. (Oral)

In the instant petition, petitioner has prayed for the following relief:

“To set aside the order dated 05.12.2016 (Annexure P-3) passed by the Court of Shri Gaurav Gupta, PCS, Judicial Magistrate 1st Class Moga, whereby the learned Judicial Magistrate 1st Class Moga has closed the evidence of the complainant by order and disallowed the application of the complainant/petitioner for summoning record of Deputy Commissioner Moga in complaint No.289/2013 dated 17.05.2012 titled as Ajaib Singh Vs. Balvir Singh etc. under Section 434/34 IPC pending in the court of Shri Gaurav Gupta, PCS, Judicial Magistrate 1st Class Moga for 22.12.2016 which is liable to be accepted for examination of CW Naib Tehsildar along with the record, to meet the end of justice.”

2. Perusal of order dated 5.12.2016 (Annexure P-3) passed by the Judicial Magistrate Ist Class Moga insofar as rejection of the petitioner's application for summoning record of Deputy Commissioner Moga is not a reasoned order. What has been stated is that petitioner should have filed such application earlier.

3. Learned counsel for the petitioner submitted that order dated 5.12.2016 is not a speaking order so also it is not a reasoned order. Summoning of record from the office of Deputy Commissioner Moga is very much essential for the purpose of deciding the matter.

4. Per contra, learned counsel for the respondents submitted that sufficient opportunity had been granted to the petitioner and it is not availed by him. Summoning of record from Deputy Commissioner office at this belated stage may not be correct and it has been rightly rejected by the trial Court. Consequently, petitioner has not made out a case.

5. Heard learned counsel for the parties.

6. Short question for consideration in the present petition is whether order dated 5.12.2016 (Annexure P-3) passed by the Judicial Magistrate Ist Class Moga is reasoned or not. Reasoning assigned for rejection of the petitioner's application for summoning the record of the Deputy Commissioner Moga is only to the extent that petitioner should have approached by making necessary application at an early stage. Even on the same day case was pending for evidence of complainant and Court closed the evidence by its order. No doubt petitioner afford last opportunity also but at the same time Court should have given weightage to his request.

7. In view of these facts and circumstances, order dated 5.12.2016 (Annexure P-3) passed by the Judicial Magistrate Ist Class Moga is set aside while allowing the petitioner's application for summoning record of Deputy Commissioner Moga for the purpose of proceedings further in the matter. Trial Court is directed to afford two effective opportunity to conclude evidence to the complainant. This order shall not permit the complainant to adduce any evidence except which is allowed with regard to summoning of

record and its production.

8. Petition stands allowed accordingly.

24.07.2018
rajeev

(P.B. Bajanthri)
Judge

Whether speaking/reasoned Yes/No

Whether reportable Yes/No