

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

117

CRM-M-9393-2016

Date of Decision:03.08.2018

Rajesh

.....Petitioner

Versus

State of Haryana and others

.....Respondents

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

**Present: Mr. Prabhjeet Singh Sullar, Advocate for
Mr. A.S. Sullar, Advocate,
for the petitioner.**

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

**Mr. Madan Gupta, Advocate,
for respondent Nos.2, 3, 4, 6 to 9 and 11 to 22.**

HARI PAL VERMA, J.(Oral)

Prayer in this petition filed under Section 482 Cr.P.C. is for quashing the impugned order dated 25.02.2016 (Annexure P-1), whereby criminal revision petition filed by the petitioner against the order dated 06.07.2015 passed by Judicial Magistrate 1st Class, Jind, closing the evidence of the prosecution was dismissed.

Learned counsel for the petitioner has argued that vide order dated 06.06.2015, learned Judicial Magistrate 1st Class has allowed the application filed by the prosecution under Section 311 Cr.P.C. The prosecution filed the application under Section 311 Cr.P.C. so as to examine Dr. Jai Parkash, Dr. Rahul Chopra and Dr. Rohit Raina, claiming to be material witnesses and therefore, the examination of these witnesses was

very essential for just and proper decision of the case. The necessity of filing the application had arisen as these witnesses were not mentioned in the list of witnesses by the investigating officer, at the time of filing of challan. In fact it was an inadvertent mistake on the part of the investigating officer. The said application was allowed by learned Judicial Magistrate 1st Class vide order dated 06.06.2015. Accordingly, the proposed witnesses were allowed to be examined by the prosecution being material and essential for the just decision of the case. However, vide order dated 06.06.2015, learned Judicial Magistrate 1st Class, had made it clear that it would be the last opportunity to conclude the entire prosecution evidence. Thereafter, the witnesses so cited in the application under Section 311 Cr.P.C. could not be examined and it was reported by the Head Constable Sumesh that Dr. Rohit Raina, Medical Officer was absent from 01.06.2014 and therefore, he could not appear. Similarly, other two doctors namely Dr. Jai Parkash and Dr. Rahul Chopra also could not be examined. Thereafter, vide order dated 06.07.2015, since the prosecution failed to examine the aforesaid doctors, the trial court closed the evidence, which was made subject matter of challenge before the revisional court, which dismissed it.

Learned counsel for the petitioner has argued that in view of the law laid down by the Hon'ble Apex Court in **Rajaram Prasad Yadav Versus State of Bihar and another**, 2013(3) R.C.R. (Criminal) 726, no prejudice is going to be caused to the accused, more particularly when there is no lapse on the part of the petitioner, the trial court should have granted one more opportunity to the petitioner so as to examine the witnesses cited in the application. He has further argued that the trial court in its order dated 06.06.2015 has found that the proposed witnesses are very material

witnesses and are therefore essential to be examined. Once the court had formed an opinion that these are material witnesses and are essential for just decision of the case, the order passed by learned trial court dated 06.07.2015 is too harsh and the court should have granted one more opportunity. Thereafter, the petitioner approached the revisional court against the order dated 06.07.2015, whereby the evidence was closed, however, said revision petition was also dismissed.

On the other hand, learned counsel appearing on behalf of respondent Nos.2, 3, 4, 6 to 9 and 11 to 22/accused has argued that despite having been afforded ample opportunities to the prosecution, firstly the prosecution intentionally did not include the names of these witnesses and thereafter, at an advanced stage they moved an application under Section 311 Cr.P.C. so as to incorporate these witnesses and to get them examined. Despite there being the order dated 06.06.2015 passed by the trial court, when the petitioner was allowed to examine these witnesses, he has miserably failed to examine these witnesses. The accused are suffering trial in the case since 2011 and speedy trial is a fundamental right of the accused.

I have heard learned counsel for the parties.

There is no dispute that vide order dated 06.06.2015, the prosecution was given an opportunity to examine the witnesses as referred in the application dated 31.03.2015. Since the trial was pending since long , the trial court has rightly observed and has directed the prosecution to conclude the evidence by affording one opportunity. But as held in **Rajaram Prasad Yadav's case (supra)**, this Court finds that the provisions of Section 311 Cr.P.C. are to be interpreted liberally.

There is no doubt that the petitioner was afforded one effective

opportunity to conclude his evidence but it was beyond the control of the prosecution to examine the witnesses so cited. For example, service on witness namely Dr. Rohit Raina could not be made as he was absent since 2014. Therefore, it was beyond the reach of the petitioner.

Be that as it may, in the interest of justice and considering the parameters as laid down in Rajaram Prasad Yadav's case (supra), this Court finds that the petitioner be afforded one more effective opportunity to conclude his entire prosecution evidence.

Accordingly, the present petition is allowed. The orders dated 25.02.2016 (Annexure P-1) and 06.07.2015 (Annexure P-3), are hereby set aside. The trial court will afford one more effective opportunity to the petitioner to conclude his entire prosecution evidence. It is made clear that service on the said witnesses would be sole responsibility of the petitioner and he would not be entitled any mileage for delayed service or non-appearance of these witnesses.

August 03, 2018
seema

(HARI PAL VERMA)
JUDGE

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No