

CRM-M-7459-2017 (O&M)

Date of decision: 26.03.2018

Harjinder Singh

...Petitioner

Versus

State of Punjab and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: Mr. Vikas Gupta, Advocate, for the petitioner.

Mr. Abhaypal Singh Gill, AAG, Punjab.

Mr. Bikramjit Aroura, Advocate, for respondents No.2 to 4.

ARVIND SINGH SANGWAN, J. (ORAL)

Prayer in this petition is for quashing the impugned order dated 13.02.2017 (Annexure P-1) vide which, the trial Court has dismissed an application filed under Section 311 Cr.P.C. in FIR No.107, dated 13.05.2011 under Sections 419, 420, 465, 468, 471, 120-B, 511 of IPC, registered at Police Station City Tarn Taran, District Tarn Taran, for summoning two persons i.e. witness No. 6-Gurwinder Singh SI/SHO and witness No.11 Rakesh Kumar.

Learned counsel for the petitioner, with reference to the order dated 28.11.2016, submits that non-bailable warrants were issued against PW-6-Gurwinder Singh, Investigating Officer of the case, for 15.12.2016 and despite that, he failed to appear before the trial Court. It is further stated that on 28.11.2016, the case was adjourned for 15.12.2016 and without taking more effective measures to procure the presence of PW-6 Gurwinder Singh and PW-11 Rakesh on 15.12.2016, the evidence of the prosecution was closed. Therefore, the petitioner filed an application under Section 311 Cr.P.C.

Counsel for the petitioner further submitted that the trial Court,

while passing the impugned order, has not considered the requirement of Section 311 Cr.P.C. which provides that the trial Court has wide powers to summon an additional accused or even to recall a witness for the purpose of coming to just and proper decision of the case and to find out the truth. Counsel for the petitioner submits that the provision of Section 311 Cr.P.C. is one of the powers granted to a Court to bring the truth on record and do justice to the parties. Counsel for the petitioner submits that the trial Court, without giving any reason, passed the impugned order, which is a non-speaking order and the only reason is given that the evidence is closed by Court order, after granting last opportunity to serve witness through the Senior Superintendent of Police.

Counsel appearing for respondent No.2 has however, opposed the prayer for granting one more opportunity to the petitioner for recording the statement of the aforesaid witnesses on the ground that despite the fact that at one point of time, PW-6 Gurwinder Singh was present but his statement was not got recorded by the Public Prosecutor and with regard to the second witness, PW-11 Rakesh Kumar, it is submitted that neither it is stated in the application as to how the statement of said witness is relevant for just and proper decision of the case nor prosecution has made any serious efforts to record his statement. It is further submitted that the prosecution evidence in this case started in the year 2013 and despite availing of number of opportunities by the petitioners/complainant, the prosecution evidence was not concluded.

Learned State counsel, on instructions from HC Jagjit Singh has submitted that evidence of PW-6 Gurwinder Singh, SI/SHO, who conducted an enquiry, is necessary in the case.

After hearing learned counsel for the parties, I find merit in the present petition qua witness No.6- Gurwinder Singh SI/SHO only. So far as, the other witness PW-11 is concerned, nothing has been shown that the prosecution has made serious efforts to procure his presence before the trial Court and evidence of the prosecution was closed by order. However, with regard to Gurwinder Singh, it is apparent from the order dated 28.11.2016 that his presence was sought by issuance of non-bailable warrant for 15.12.2016 and on that day, i.e. 15.12.2016, the evidence of the prosecution was closed without enquiring, whether the non-bailable warrants were served on this witness or making more serious efforts to procure the presence of this witness.

In view of the above, the present petition is partly allowed. The impugned order dated 15.12.2016, closing the evidence of the prosecution as well as the order dated 13.02.2017, dismissing the application under Section 311 Cr.P.C. are set aside with regard to non-summoning of witness No.6-Gurwinder Singh, SI/SHO.

The parties are directed to appear before the trial Court on 05.04.2018 and the trial Court will fix one effective opportunity for recording the statement of PW-6-Gurwinder Singh, SI/SHO. Since this witness is an official witness, the trial Court will ensure his presence in accordance with law.

(ARVIND SINGH SANGWAN)
JUDGE

26.03.2018
Hemlata

Whether speaking/reasoned
Whether reportable

Yes / No
Yes / No