

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

CRM-M-6426 of 2018.

Decided on:-July 27, 2018.

Gurmeet Singh.

.....Petitioner.

Versus

State of Punjab and others

.....Respondents.

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

Present:- Mr. Balbir Kumar Saini, Advocate
for the petitioner.

Mr. Tanvir Joshi, AAG, Punjab
for respondents No.1 to 3.

Mr. L.S. Sidhu, Advocate
for respondents No.4 to 7.

HARI PAL VERMA, J. (ORAL)

Prayer in this petition filed under Section 482 Cr.P.C. is for quashing/setting aside the impugned order dated 08.01.2018 (Annexure P-10), whereby the prosecution evidence has been ordered to be closed as well as order dated 10.01.2018 (Annexure P-12), whereby the application under Section 311 Cr.PC filed on behalf of the prosecution for examination of four witnesses i.e. (i) ASI Lakhwinder Singh No.42/Moga (investigating officer), (ii) Dr. Joginder Sahota along with x-ray reports in MLR No.SD/6/KIK/2013, (iii) Dr. Shikha along with MLR No.SD/6/KIK/2013 dated 26.10.2013 and (iv) Dr. Manish, has been dismissed.

Learned counsel for the petitioner states that FIR No.203 under Sections 324, 323, 148, 149, 506, 379 as well as Sections 326 and 341 read with Section 34 IPC (added later on) dated 31.10.2013 was registered against the accused at Police Station Dharamkot, District Moga at the behest of complainant Gurdeep Singh. The petitioner is real brother of the complainant and an eye witness of the occurrence. However, complainant Gurdeep Singh has died during the trial.

He further states that the aforementioned four witnesses sought to be examined were duly summoned as provided under law i.e. firstly by way of summons, then bailable warrants and thereafter by way of non-bailable warrants. But still, the trial Court has closed the evidence vide order dated 08.01.2018. Even the application under Section 311 Cr.PC for summoning the aforesaid witnesses was dismissed on the ground that despite numerous opportunities having been granted, the prosecution has failed to examine the witnesses.

On the other hand, learned counsel for respondents No.4 to 7 has argued that earlier also, an application under Section 311 Cr.PC was filed by the petitioner. The petitioner was afforded one opportunity, but he failed to conclude his evidence.

I have heard learned counsel for the parties.

Various zimini orders as attached with the file reveal that the trial Court has issued summons, bailable warrants and non-bailable warrants of the witnesses, but still service upon the witnesses was not effected. In case the aforesaid witnesses are not examined, the case of the prosecution is likely

to fail. Therefore, without making any observation on the merits of the case and considering the fact that the trial Court has put its efforts for calling upon the witnesses to be examined, but despite having been issued summons, bailable warrants and non-bailable warrants, the service could not be effected, this Court finds that the prosecution may not suffer for non-appearance of the aforesaid four witnesses.

Accordingly, the present petition is allowed and the impugned orders dated 08.01.2018 and 10.01.2018 passed by learned trial Court are set aside. In the interest of justice, one more opportunity is granted to the prosecution to lead its evidence and to examine the witnesses as mentioned hereinabove. Senior Superintendent of Police, Moga shall make an endeavour to effect service upon the witnesses so cited.

July 27, 2018
Yag Dutt

(HARI PAL VERMA)
JUDGE

Whether speaking/reasoned: Yes

Whether Reportable: No