

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

CRR No. 4029 of 2017

DATE OF DECISION :- 30 May 2018

Kulwant and others

...Petitioners

Versus

State of Haryana and another

...Respondents

CORAM: HON'BLE MR. JUSTICE H.S. MADAN

Present:- Mr. Shoib Khan, Advocate for the petitioners.

Mr. Gaurav Bansal, AAG, Haryana.

Mr. Kamal Chaudhary, Advocate for respondent no.2.

Accused Kulwant, Aman Kumar, Pawan Kumar and Vinod Kohli faced trial by Judicial Magistrate Ist Class, Kalka who vide judgment dated 21.5.2016 acquitted the accused of the charge framed against them. In that case the Court had closed the evidence of prosecution vide order dated 21.5.2016. That order was challenged by way of filing a revision petition in the Court of Sessions at Panchkula. The said petition was disposed of by Additional Sessions Judge, Panchkula, who accepted it and set aside the order with regard to closing of the prosecution evidence and resultantly acquitted the accused by the trial Magistrate, Kalka. Learned Additional Sessions Judge while accepting the Revision Petition had observed that though PW2 Hari Parkash-complainant had turned hostile during the trial but apart from Hari Parkash, Pankaj son of Krishan Kumar, was also injured

at the hands of respondents no. 1 to 4 and if Hari Parkash had turned hostile, the trial Court was required to summon other injured-appellant (Laxmi Chand and Pankaj Kumar) who were also medico legally examined with copies of MLRs being available on record but as revealed from perusal of interim orders, no summons were ordered to be issued to them and it was left to total discretion of Ahlmad of the Court. Learned Additional District and Sessions Judge further observed that Pankaj was never served and the trial Court in a very casual manner without application of mind adjourned the case from time to time for prosecution evidence. The reasoning given by Additional Sessions Judge is there in paras no. 7 and 8 of the order which for ready reference are reproduced as under:-

7.”From the record of the trial Court, it is crystal clear, the pivot of case of the prosecution was revolving around statement Ex.PW2/A suffered by Hari Parkash PW2, who resiled from prosecution version and declared witness hostile to the prosecution. Apart from Hari Parkash son of Mul Chand and Pankaj son of Krishan Kumar were also allegedly injured at the hands of respondents no. 1 to 4. If Hari Parkash, one of the injured while stepping into witness box resiled from prosecution version, despite that the learned trial Court was required to summon other injured appellant and one Pankaj Kumar. They were also medico-legally examined and copy of MLR pertaining to them is on the record of the trial Court. From the perusal of various interlocutory order passed by the learned trial Court no summon was ordered to be issued,

specifically, in the name of appellant. However, it was left to the total discretion of Ahlmad of the Court. Pankaj was never served as no summons have ever been served upon him. The learned trial Court in a casual manner without application of mind adjourned the case from time to time for prosecution evidence. If any witness such as Mange Ram, ASI, Narender Singh were ever served, no effort was made to secure their presence while adopting coercive methods. Mere counting the opportunity are not sufficient, if a particular witness, despite service fails to appear before the Court concerned, then, it is the duty of the Court concerned to secure the presence of the witness, despite service fails to appear before the court concerned, then, it is the duty of the court concerned to secure the presence of the witness concerned while adopting coercive method such as bailable warrant or warrant of arrest. The hands of the Court concerned are not so tight. It can also attach the movable-immovable property of any person concerned, to secure his or her presence. Moreover, Criminal Procedure Code, no where provides closing of prosecution evidence by the Court concerned, however, if the prosecution failed to adduced evidence, then, court concerned may pronounce the judgment of acquittal. The non-application of mind by the learned trial Court has caused grave prejudice to the appellant and another injured Pankaj and the way in which learned trial had conducted the proceeding, it tantamounts to travesty of

justice.

8. So far maintainability of the revision is concerned, it was an optional with the revisionist to file appeal against the order dated 21.5.2016 vide which evidence of the prosecution was closed or to file an appeal against the judgment of acquittal of the same day. The closing of evidence of the prosecution vide order dated 21.5.2016 resulted to passing judgment of acquittal on the same day, therefore, order of closing of evidence by the trial Court on 21.5.2016 is revisable. The Revision is maintainable.”

Whereas, the operative part is contained in para no. 10 and 11 which are to the following effect :-

10. “Learned trial Court is directed to summon and examine the remaining prosecution witnesses, who have already not been summoned and examined. In case on summoning of any of the prosecution witness, he/she fails to appear before the trial Court, then, the trial Court will adopt coercive methods to secure his/her presence in accordance with law such as, firstly, issuance of bailable warrants and then, warrant of arrest and if warrant of arrest does not serve purpose, then, the trial court may attach his/her movable-immovable property including the salary, in case witness is Government officer and on concluding of prosecution evidence after recording statement of the respondents no. 1 to 4 under Section 313 Cr.P.C., on affording reasonable opportunity of defence

evidence to the respondents no. 1 to 4. Learned trial Court will pass afresh judgment on hearing the learned APP and the learned defense counsels.

11. “The appellant, who is one of the prosecution witnesses through his Advocate Sh. Amit Dudeja is directed to appear before the trial Court on 6.10.2017 and thereafter trial Court will fix the date for recording his statement as prosecution witness.”

The accused feeling aggrieved have approached this Court by way of filing the Revision Petition.

I have heard learned counsel for the parties besides going the record.

I do not find any reason to interfere with the judgment passed by Additional Sessions Judge, Panchkula remanding the case for fresh trial, therefore, the petition stands dismissed.

(H.S. MADAAN)
JUDGE

May 30, 2018
p.singh

Whether speaking/reasoned

Yes/No

Whether Reportable

Yes/No