

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

**CRM-M No. 3398 of 2019
Date of Decision:-26.08.2019**

Major Ajaypal Singh

...Petitioner

Versus

State of Punjab and another

...Respondents

CORAM:- HON'BLE MR. JUSTICE MANOJ BAJAJ

Present:- Mr. Amit Arora, Advocate
for the petitioner.

Mr. Ramdeep Partap Singh, DAG, Punjab.

Mr. C.L. Verma, Advocate
for the complainant.

MANOJ BAJAJ J.(Oral)

The petitioner has challenged the order dated 01.11.2018 passed by the Chief Judicial Magistrate, Tarn Taran in case FIR No.22 dated 16.1.2015, under Sections 420 and 506 IPC, registered at Police Station City, Tarn Taran, whereby the evidence of the prosecution was closed and further application filed by the prosecution under Section 311 Cr.P.C. for summoning the witnesses was declined vide order dated 09.1.2019.

At the time of issuing notice of motion, following order was passed on 24.1.2019 :-

“Learned counsel for the petitioner contends that after framing of the charges, whenever the witnesses were summoned, they failed to appear on account of different reasons either for lack of service upon them or on account of pre occupation on account of administrative exigencies. Learned counsel for the petitioner further contends that the Court proceeded to close the evidence on 01.11.2018 and only one witness i.e. attesting witness to the agreement to sell has been examined. Majority of the remaining witnesses are the official witnesses. Subsequently, the application filed under Section 311 Cr.P.C. was also dismissed vide order dated 09.1.2019.

Notice of motion for 20.2.2019.

In the meantime, further proceedings before the trial Court shall remain stayed.

At this stage, Mr. Aditya Dassaua, Advocate has put in appearance and filed memorandum of appearance on behalf of respondent No.2.”

Learned counsel appearing for the complainant has produced the zimni orders to contend that various opportunities were given, however, the witnesses failed to appear before the Court.

At this stage, learned counsel for the petitioner has invited the attention of the Court to Annexure P-6 (colly.) to contend that the witnesses were not served.

Learned counsel appearing for the complainant is unable to refute the above position.

In view of the above facts and circumstances this Court finds that the trial Court had proceeded to pass the extreme order of closure of

evidence and further refused to accept the application under Section 311 Cr.P.C. thereby depriving the prosecution to discharge the onus.

Resultantly, the petition is allowed and the impugned order dated 01.11.2018 is set aside and it is ordered that the trial Court shall afford three effective opportunities to the prosecution to adduce its entire evidence, from the date of receipt of the certified copy of this order.

August 26, 2019
Vijay Asija

(MANOJ BAJAJ)
JUDGE

Whether speaking/reasoned
Whether Reportable

Yes / No
Yes / No