

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

280

**CRM-M-3727-2019 (O&M)
Date of Decision: 14.03.2019.**

Hari Mohan

....Petitioner.

Versus

State of Haryana and others

....Respondents.

CORAM: HON'BLE MR. JUSTICE SHEKHER DHAWAN

Present: Mr. Akshay Kumar Jindal, Advocate for the petitioner.

Mr. D.K. Mittal, Deputy Advocate General, Haryana.

Shekher Dhawan, J.

Present petition under Section 482 Cr.P.C. is for quashing of the order dated 11.12.2018 (Annexure P4) passed by learned Judicial Magistrate Ist Class, Gurugram, whereby the application filed by the petitioner-complainant under Section 311 Cr.P.C. was dismissed.

Learned counsel for the petitioner contended that two material witnesses i.e. Record Keeper of Tehsil, Manesar, alongwith release deed bearing Vasika No.132 dated 12.04.2012 and Clerk of Election Office Dharuhera, District Rewari, were required to be summoned. As per the order under challenge, these witnesses were, in fact, summoned by the Court vide order dated 12.06.2017, but the Public Prosecutor closed the prosecution evidence completely ignoring the fact that Prosecutor is not master of the case. He is to lead the prosecution evidence only and if the witnesses, which

were material and required to be summoned, have actually not been

summoned, it was the duty of the Court to summon those witnesses and more so, if application under Section 311 Cr.P.C. was filed before the Court.

Learned Magistrate has completely ignored the above fact and legal position, while passing the impugned order dated 11.12.2018. Accordingly, order dated 11.12.2018, is hereby set aside and trial Judge is directed to summon these two witnesses for next date and take required steps for their examination. Needless to mention that in case these witnesses fail to appear despite service then coercive steps under provisions of Cr.P.C. be taken to secure their presence.

The present petition stands allowed, in the above terms.

(SHEKHER DHAWAN)
JUDGE

14.03.2019

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Whether speaking/ reasoned : Yes/ No

Whether Reportable : Yes/ No