

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Criminal Misc.-M-11920 of 2018.

Date of Decision: September 13, 2019.

Jaswant Kumar

.....Petitioner

versus

State of Punjab and others

.....Respondents

CORAM: HON'BLE MR.JUSTICE ANIL KSHETARPAL.

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

Mr.Bhupinder Beniwal, AAG, Punjab.

Mr.H.S.Batth, Advocate, for respondent Nos.2 to 5.

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Anil Kshetarpal, J. (Oral)

Through this petition, correctness of the order passed by the learned Magistrate dated 06.03.2018 has been assailed. An application filed by the Assistant Public Prosecutor on behalf of the prosecution under Section 311 Cr.P.C. for permission to examine the Assistant Sub Inspector Satnam Singh, Investigating Officer and Dr.Sapna Raj, Medical Officer, PHC, Khem Karan, has been dismissed by the learned Judicial Magistrate 1st Class, Patti. On reading of the order, it is apparent that the Court dismissed the application on the ground that the application has been moved after the statement of the accused under Section 313 Cr.P.C. has been recorded and defence evidence stands closed. Therefore, the Court has formed an opinion that after the defence evidence stands closed, the application is not maintainable.

Learned counsel for the petitioner submits that no defence evidence has been led and in the statement under Section 313 Cr.P.C. accused has not disclosed any defence.

On the other hand, learned counsel for the respondents submits

that the prosecution has been granted as many as more than 25 opportunities and therefore, this Court should not grant permission to examine the aforesaid witnesses.

It is undisputed that the aforesaid two witnesses are official witnesses. Investigating Officer has carried out the investigation and therefore, his evidence is of utmost importance to the case of the prosecution. Similarly, examination of Dr.Sapna Raj, Medical Officer is necessary to prove the injuries. Hence, both the witnesses are relevant and important to establish the case of the prosecution.

It is also undisputed that the prosecution has summoned both the witnesses but these witnesses never chose to appear. If the official or non-official witnesses are summoned and they do not choose to appear, the Court is enabled by law to take coercive steps. The Court cannot sit as a silent spectator and punish the prosecution on this lapse on the part of the witnesses who have been summoned.

Be that as it may. Section 311 Cr.P.C. grants discretion to a Magistrate or Trial Judge, as the case may be, to summon the material witnesses or examine the persons present. Such power can be exercised by the Court at any stage or enquiry, trial or other proceedings.

Keeping in view the facts of the present case, this Court is of the opinion that the prosecution deserves to be granted opportunity and such opportunity would be for the ends of justice. Accordingly, the order under challenge is set-aside and the learned Judicial Magistrate is directed to grant opportunity to examine the witnesses noticed above. The Court, if called upon by the prosecution, would take coercive measures to secure the presence of the aforesaid two witnesses. Learned Magistrate would make

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sincere endeavour to conclude the trial within a period of three months from the date of receiving a certified copy of this order. If prayed for, corresponding opportunity be granted to the defence.

The petition stands disposed of accordingly.

September 13, 2019
mohinder

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned	:	Yes/No
Whether Reportable	:	Yes/No