

S.No.109

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

CRM-M-8640 of 2019 (O&M)

Date of Decision:26.02.2019

ATS Infrastructure Ltd.

.....Petitioner

Vs.

Savita and others

.....Respondents

CORAM:- HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

Present:- Mr. S.C. Nagpal, Advocate
for the petitioner.

Rajbir Sehrawat, J.(Oral)

The present petition has been filed by the petitioner challenging the orders dated 14.01.2019 and 28.01.2019 passed by Sub Divisional Judicial Magistrate, Dera Bassi.

Learned counsel for the petitioner contends that the orders impugned in the present petition have been passed in a cryptic manner. The evidence of the complainant was closed for no valid reasons. Thereafter, even the application filed by the petitioner/ complainant under Section 311 Cr.P.C for calling two official witnesses has been dismissed. It is submitted by the counsel that while rejecting the application under Section 311 Cr.P.C., the trial Court has recorded that it could not review its own orders of closing the evidence of the complainant and that the petitioner could file revision. It is further contended that the trial Court has not even applied its mind as to whether the witnesses sought to be summoned are necessary for just decision of the case or not. Learned counsel has also submitted that a bare perusal of the impugned order itself shows that; although the case has been adjourned several times, however, more than half of the times, it was the defence/ accused; because of whom the case was adjourned. Hence, the

orders deserve to be set aside. The petitioner deserves to be granted an opportunity to examine two witnesses mentioned in the application.

Having heard learned counsel for the petitioner and perusing the file, this Court does not find any ex-facie illegality or irregularity in the orders passed by the Court below. The record of the case itself shows that the case has been adjourned by the trial Court 18 times by now and the case is still at the stage of pre-charge evidence. That itself reflects upon the fact that the complainant has already been given sufficient time by the Court below.

However, this Court also finds that several times, the accused also was responsible for adjournment of the case. Therefore, they also cannot be absolved of the blame of wasting the time of the Court, besides the petitioner. A perusal of the orders also shows that one of the reason for dismissal of the application filed under Section 311 Cr.P.C is that the trial Court could not have recalled its own order; with further observation that the petitioner could approach the Court in revision. Accordingly, the present revision petition has been filed challenging the order of closure of evidence as well as the order dismissing application filed under Section 311 Cr.P.C.

Although, as mentioned above, there is no illegality or irregularity in the impugned orders as such, however, keeping in view the facts and circumstances in the case, and also to remove any traces of doubt in the mind of the petitioner that it is not being given a fair opportunity to prove their case, it would not be unjustified if the petitioner is granted one effective opportunity to produce whatever witnesses, the petitioner want to

produce, however, by putting it to an appropriate financial burden.

Accordingly, the present petition is disposed of with a direction that the petitioner would be granted one effective opportunity to examine the witnesses which it had sought to examine by moving an application under Section 311 Cr.P.C. However, this opportunity would be granted to the petitioner subject to the payment of Rs.1 lakh as cost. Out of this, 50% of this cost amount shall be deposited with Punjab State Legal Services Authority, Mohali, whereas remaining 50% of the cost amount shall be deposited with Punjab and Haryana High Court Bar Association. It is further clarified that the petitioner shall be granted opportunity to lead the evidence only after it produces the receipt of having deposited the costs; as mentioned above.

Needless to say that since the witnesses sought to be produced by the petitioner are the official witnesses, therefore, the trial Court would ensure to secure the presence of the witnesses sought to be examined by the complainant; after the petitioner takes the requisite steps for the same.

Copy of the order be given dasti on payment of usual charges.

February 26, 2019
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(RAJBIR SEHRAWAT)
JUDGE

Whether Speaking/reasoned	Yes/No
Whether Reportable	Yes/No