

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

CRM-M-13914-2018 (O&M)
Date of decision : 06.09.2019

Gurnam Singh

...Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Ritesh Pandey, Advocate for the petitioner.

Mr. Bhupender Beniwal, AAG, Punjab.

ANIL KSHETARPAL, J. (ORAL)

Challenge is to the order dated 06.02.2018 passed by the
Chief Judicial Magistrate, Gurdaspur, which reads as under:-

*“An application for exemption of personal
appearance of accused Jagir Kaur is moved. As per the
ground mentioned therein, the same is allowed for today
only.*

*PW Atinderpal Singh has come present in the
pursuance of the summons. Persual of the file shows that
on the last date of hearing on 07.11.2017 Shri Atinderpal
Singh SDM has made statement that the summons record
not available in their office.*

No other PW is present. Summons issued to the Pws

received back unserved.

For prosecution evidence at last opportunity at own responsibility to come up on 24.04.2018. It is made clear that in event of no evidence led by the prosecution, it shall be closed by order.

Ahlmad is directed to not issue the summons to the prosecution witnesses. The evidence shall be produced by prosecution at their own responsibility. ”

Learned counsel for the petitioner contends that initially FIR was registered, however, the police did not carry out proper investigation and submitted a cancellation report. Petitioner-first informant filed a protest petition which was treated as a complaint and after examining the evidence, summons were issued to the accused. Accused were charge-sheeted. He submits that when prosecution evidence was going on, he deposited necessary charges for summoning certain official witnesses with official record. Summons issued were received back unserved.

Learned Court directed the office not to issue summons to the prosecution witness.

Learned counsel submits that such course adopted by the Chief Judicial Magistrate was wrong.

Learned counsel for the State was unable to justify the view drawn by the learned Chief Judicial Magistrate. In a case of such nature when official record is required to be produced, it is necessary for the Court to lend its help in securing the presence of the summoned witnesses with the record requisitioned. In this case, the Court adopted strange procedure which is not in consonance with the procedure laid down in Code of Criminal

Procedure 1973, High Court Rules and Orders and is also against the principles of natural justice.

Learned counsel for the petitioner has informed the Court that during the pendency of the present petition, the trial Court has closed the evidence of the prosecution.

Be that as it may. Order under challenge is set aside. Presence of summoned witnesses shall be secured with the help of the Court and their evidence would be recorded by the Court.

In view of the above, the present petition is disposed of.

06.09.2019

Pawan

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No