

101-A

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

CRM-M-29397 of 2017.
Decided on:- July 23, 2019.

Anita Yadav.

.....Petitioner.

Versus

State of Haryana and others

.....Respondents.

CORAM: HON'BLE MR. JUSTICE HARI PAL VERMA.

Present:- Mr. J.P. Sharma, Advocate
for the petitioner.

Ms. Gaganpreet Kaur, AAG, Haryana.

Mr. Sandeep Verma, Advocate
for respondents No.2 to 5.

HARI PAL VERMA, J. (Oral)

The petitioner has filed the present petition under Section 482 Cr.P.C. for setting aside the orders dated 26.07.2017 and 31.07.2017 passed by learned Judicial Magistrate 1st Class, Rewari.

The impugned order dated 26.07.2017 passed by learned Magistrate reads as under:

“One PW namely Parmod Kumar present and cross examined. No other PW is present despite specific directions issued times out of number. PW Kuldeep, Prithvi Singh and Hari Singh not present despite service. Ld. APP for the State also give up PW Prithvi Singh being won over. Statement recorded. Heard. In view of the statement of Ld. APP for the State, the

name of PW Prithvi Singh be deleted from the list of witnesses. It is apt to note here that the present case is pending year 2010 and almost 21 effective opportunities have been granted to the prosecution for conclusion of its evidence. Therefore, the case is adjourned to 31.07.2017 for prosecution evidence at own responsibility and in the event of non availability of prosecution evidence available on the date fixed, the same shall be closed. A copy of this order also be sent to SP office Rewari for information. An application also filed by prosecution for dismissal of surety bonds of the accused persons. Copy supplied. The reply of above noted application also be awaited for the date fixed on behalf of defence. In addition, notice through special messenger also be issued to the Pws for the date fixed.”

Similarly, the impugned order dated 31.07.2017 passed by learned Magistrate is reproduced as under:

“No PW is present despite specific detailed directions issued by this Court vide order dated 26.07.2017, 17.07.2017. It is to be noted here that the present case is pending from year 2010 and almost 22 opportunities have been granted to the prosecution for conclusion of its evidence so far. Moreover, speedy trial is legal right of an accused, which cannot be suspended for indefinite period at the mercy of the prosecution. Hence, having no other option, the Pws are hereby closed in accordance with order of this Court dated 26.07.2017. To come up on 08.08.2017 for recording of statement of accused under section 313 Cr.P.C. Reply of application filed on 26.07.2017 also be filed on the date fixed.”

Learned counsel for the petitioner has argued that the petitioner being complainant has no control over the prosecution witnesses, who are official witnesses. Further, in addition of PW2, namely, Kuldeep Singh and

Hari Singh, other prosecution witnesses, namely, Sandeep Kumar, Kulbir and Shamsher Singh are also required to be examined.

On the other hand, learned counsel for respondents No.2 to 5 has argued that the case is pending before trial Court since the year 2010 and as many as 21 effective opportunities have already been granted to the prosecution to conclude its evidence, but the prosecution has failed to conclude the same for one reason or the other. In this manner, the accused are suffering adversely and continuously.

Having heard learned counsel for the parties and looking into the impugned orders, this Court finds that though the prosecution has been granted as many as 21 opportunities to conclude its evidence, but it is certainly beyond the reach of petitioner-complainant to summon the prosecution witnesses as they are under the direct control of concerned Superintendent of Police. Vide order dated 26.07.2017, learned Magistrate had made it clear that the prosecution evidence shall be adduced at own responsibility and in the event of non-availability of the prosecution evidence on the date fixed i.e. 31.07.2017, the prosecution evidence shall be closed and copy of the order dated 26.07.2017 was duly sent to the office of concerned Superintendent of Police, but still, the prosecution witnesses, namely, Kuldeep and Hari Singh were not examined by the prosecution.

So far as examination of PW Prithvi Singh is concerned, he has already been given up by the APP for the State on the plea that he has been won over and on the basis of this statement made by the APP, learned trial Court has ordered that name of PW Prithvi Singh be deleted from the list of

witnesses vide impugned order dated 26.07.2017. Thus, this Court finds that no such direction can be given to examine this witness.

Therefore, the impugned orders dated 26.07.2017 and 31.07.2017 passed by the trial Court are set aside to the extent that the trial Court shall provide two effective opportunities to the prosecution so as to examine PWs, namely, Kuldeep and Hari Singh. The concerned Superintendent of Police shall ensure the presence of these witnesses before the trial Court.

At the same time, the trial Court shall also ensure expeditious conclusion of the trial as the case is pending since the year 2010.

The present petition is, accordingly, disposed of in these terms.

July 23, 2019
Yag Dutt

(HARI PAL VERMA)
JUDGE

Whether speaking/reasoned: Yes

Whether Reportable: No