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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-39647-2018

Date of Decision : July 23, 2019

Baldev Singh

.... Petitioner

Versus

State of Punjab and others

.... Respondents

CORAM : HON'BLE MR. JUSTICE SHEKHER DHAWAN.

Argued by Mr. Aayush Gupta, Advocate,
for the petitioner.

Mr. Ramandeep Sandhu, Sr. DAG, Punjab,
for respondent-State.

Mr. G.S.Virk, Advocate,
for respondent Nos.2 to 4.

SHEKHER DHAWAN, J.

Present petition under Section 482 of the Code of Criminal Procedure is for quashing of order dated 26.02.2018 (Annexure P/4) and order dated 17.03.2018 (Annexure P/9) whereby applications (Annexure P/5 and P/6) filed by the petitioner under Section 311 Cr.P.C. have been declined by learned Judicial Magistrate Ist Class, Ludhiana in case bearing FIR No. 339 dated 12.11.2014 (Annexure P/1) under Sections 448, 427, 506, 34, 457, and 380 IPC registered at Police Station Focal Point, District Ludhiana City.

2. Facts relevant for the purpose of decision of the present

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petition; the present litigation is at the instance of Baldev Singh, complainant, who had taken a shop on rent on 1.3.1995 from Gurdial Kaur. The shop was got repaired by the complainant on 10.11.2014 and the same was locked from outside on 11.11.2014. On 12.11.2014 at about 6.00 AM, the locks of the shop were broken and the material was thrown out of the shop. Respondent no. 2 alongwith his wife entered the shop with the help of other persons to take possession of the shop and FIR, Annexure P/1, was lodged by the complainant on 12.11.2014.

3. Learned counsel for the petitioner-complainant contended that an application, Annexure P/5 was filed under Section 311 Cr.P.C. for recalling the witnesses, namely, Investigating Officer – ASI Dharminder Singh, Owner of S.S. Marketing Company and Owner of Easter Manufacturing and another application, Annexure P/6 was filed for summoning Tejinder Singh as a witness, under Section 311 Cr.P.C. in the above mentioned case. However, learned trial Judge has completely ignored the fact that the aforesaid were material witnesses and their deposition was essential for the just decision of the case, and passed the impugned orders, Annexure P/4 and P/9 declining the said applications.

4. Learned State counsel as well as learned counsel for respondents no. 2 to 4 urged that Dharminder Singh is not the main Investigating Officer, rather the main Investigating Officer in this case was SI Mukesh Kumar, who has already been examined as PW-5. The remaining material witnesses had already been examined and prosecution was given due opportunity to lead the evidence as charge was framed on 21.10.2016 and even last opportunity was given for this purpose by the

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Court below. As such, the present petition is not maintainable and the same deserves to be dismissed.

5. Having considered the submissions made by learned counsel for the parties and appraisal of record of this case file, this Court is of the considered view that certain facts are not disputed that charges were framed in this case against the accused persons on 21.10.2016. Thereafter, learned trial Magistrate adjourned the matter on different dates for recording of statements of PWs and they were examined, including Mukesh Kumar, IO of this case as PW-5. Since other witnesses were not coming present, despite last opportunity having been granted for the purpose, the prosecution evidence was closed by the Court order and thereafter case was fixed for recording of statement of accused under Section 313 Cr.P.C.

6. Now, the question arises - whether prosecution or that way, complainant can be given unreasonable opportunity to continue and delay the trial of this case?

7. The right of accused persons to expect expeditious trial is one of the fundamental rights and if the Court had passed the order for closure of prosecution evidence, it was to maintain the balance between rights of the prosecution and rights of accused-persons.

8. Taking into consideration the fact that material witnesses, including statement of Mukesh Kumar, IO had already been recorded, the orders dated 26.02.2018 (Annexure P/4) and 17.03.2018 (Annexure P/9), whereby applications filed by the petitioner under Section 311 Cr.P.C. were dismissed, do not call for any interference and the present petition under

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Section 482 Cr.P.C. on that account is without any merit and the same stands dismissed.

(SHEKHER DHAWAN)
JUDGE

July 23, 2019
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Whether speaking/reasoned?	:	Yes
Whether reportable?	:	Yes