

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

**CRM-M-45666-2016 (O&M)
Date of Decision: 12.2.2019**

Manpreet Singh

.....PETITIONER(s).

VERSUS

Pritam Singh and others

.....RESPONDENT(s).

CORAM:- HON'BLE MR. JUSTICE RAJ SHEKHAR ATTRI

Present: Mr. Manvinder Singh Sidhu, Advocate
for the petitioner.

Mr. V.S.Rana, Advocate,
for respondents No.1, 3 to 5.

RAJ SHEKHAR ATTRI, J.(Oral)

This petition under Section 482 of the Code of Criminal Procedure has been filed with a prayer to quash order dated 19.8.2016 passed by learned Judicial Magistrate, 1st Class, Jagraon whereby pre-charge evidence has been closed by order and also order dated 5.12.2016 passed by learned Additional Sessions Judge vide which the revision petition against the order dated 19.8.2016 has been dismissed.

The main ground for closing the evidence was that this Court in CRM-M-20232-2016 had directed the trial court to expedite the trial. Thereafter, direction was issued by this Court as well as the learned Sessions Judge to dispose of within six months the cases which were 10 years old.

A bare perusal of the order of the learned trial Court transpires that on 30.7.2016, one CW1 Dr. Inderjit Singh was present. His examination-in-chief was recorded but his cross-examination was deferred on the request of the learned defence counsel. Apart from that, one more witness namely Tarlok Singh was also present whose examination-in-chief was recorded and his cross-examination was also deferred on the request of the learned defence counsel. Therefore, the case was adjourned to 19.8.2016. On 19.8.2016, only Tarlok Singh was present and was cross-examination but CW1 Inderjit Singh, whose examination-in-chief, was already recorded, had not been examined. On that day, an exemption application was filed by the complainant which was opposed on the ground that a criminal complaint under Section 307 IPC has been registered against the complainant. Learned Magistrate passed the following order on 19.8.2016 as under: -

“CW3 namely Tarlok Singh is present and fully examined. No other CW is present today. Last opportunities have already been granted to the complainant to conclude the entire pre-charge evidence. But despite this, the complainant has failed to bring any other evidence today. It has also been specifically made clear to both the parties that the present case is time bound by the court of Ld. Sessions Judge, Ludhiana, therefore, necessary opportunities shall be given as the trial of the present case has to be conclude within stipulated time but despite this, complainant is not bothering to conclude his evidence. Moreover, the complainant himself

is not appearing in the court for his evidence. The exemption application of the complainant has been moved time and again, which has been opposed by the Ld. Counsel for the accused strongly on the ground that the complaint under section 307 IPC has been registered against the complainant. Therefore, he intentionally is not appearing in the present case. The Ld. Counsel for the complainant is not denying this fact. Perusal of the file transpires that exemption applications of the complainant have been moved number of times, despite specific directions of the court to the Ld. Counsel for the complainant, vide order dated 30.07.2016, he has failed to produce the complainant in the court for cross examination. Considering all these facts, exemption application of complainant is hereby disallowed. Let notice to complainant through counsel be issued for 08.09.2016. Further, in view of the facts, mentioned above, the pre-charge evidence of the complainant is hereby closed by order. Now the case is adjourned to 08.09.2016 for consideration on charge.”

The petitioner filed a revision against the said order which was dismissed by learned Additional Sessions Judge vide order dated 5.12.2016 by observing as under : -

“11. As per directions of Hon'ble High Court, learned District and Sessions Judge directed the learned Magistrate to dispose of the case within a period of six months by

granting short adjournments of not more than 15 days and by also avoiding unnecessary adjournments and to send the progress report of the case after every fortnight vide letter no.8668/G dated 13.7.2016. The complainant was aware of all these proceedings but he did not care to comply with the order of Hon'ble High Court and had been seeking adjournment after adjournment and exemption after exemption on various grounds. He has not been able to lead the evidence as per directions of the learned Trial Court and learned Trial Court has rightly passed order dated 19.8.16 and it does not seek any interference. The order being correct is impenetrable and therefore is upheld and revision-petition is dismissed. Parties are directed to appear before the learned Trial Court on 9.12.16. Record of learned Trial Court be returned alongwith the copy of this order. This file be consigned to record room.”

I have heard learned counsel for the parties and gone through the record.

Providing opportunity to adduce evidence is a part of fair trial. It is the duty of the Judge to verify as to whether any witness is necessary or any witness whose examination-in-chief is remained to be recorded, he be called because every criminal trial is a process of discovery of truth. It is the duty of a presiding Judge to explore every avenue open to him in order to discover the reality and to advance the cause of justice.

In **Ram Chander v. State of Haryana**, (1981) 3 SCC 191, while speaking about the role of a judge in a criminal trial, Hon'ble Supreme Court observed that if a criminal court is to be an effective instrument in dispensing justice, the presiding judge must cease to be a spectator and a mere recording machine. He must become a participant in the trial by evincing intelligent active interest by putting questions to witnesses in order to ascertain the truth.

Hon'ble Apex Court in **Maneka Sanjay Gandhi and another v. Rani Jethmalani**, (1979) 4 SCC 167, though in a different context, observed:-

“Assurance of a fair trial is the first imperative of the dispensation of justice and the central criterion for the court to consider when a motion for transfer is made is not the hypersensitivity or relative convenience of a party or easy availability of legal services or like mini-grievances. Something more substantial, more compelling, more imperilling, from the point of view of public justice and its attendant environment, is necessitous if the Court is to exercise its power of transfer. This is the cardinal principle although the circumstances may be myriad and vary from case to case. We have to test the petitioner's grounds on this touchstone bearing in mind the rule that normally the complainant has the right to choose any court having jurisdiction and the accused cannot dictate when- the case against him should be tried. Even so, the process of justice should not harass the parties and from that angle the court may weigh the circumstances.”

Hon'ble Supreme Court in **Zahira Habibullah H. Sheikh and another v. State of Gujarat and others**, 2004 (2) RCR (Criminal)

836 has made the following observations:-

“The principles of rule of law and due process are closely linked with human rights protection. Such rights can be protected effectively when a citizen has recourse to the Courts of law. It has to be unmistakably understood that a trial which is primarily aimed at ascertaining the truth has to be fair to all concerned. There can be no analytical, all comprehensive or exhaustive definition of the concept of a fair trial, and it may have to be determined in seemingly infinite variety of actual situations with the ultimate object in mind viz. whether something that was done or said either before or at the trial deprived the quality of fairness to a degree where a miscarriage of justice has resulted. It will not be correct to say that it is only the accused who must be fairly dealt with. That would be turning a Nelson's eye to the needs of the society at large and the victims or their family members and relatives. Each one has an inbuilt right to be dealt with fairly in a criminal trial. Denial of a fair trial is as much injustice to the accused as is to the victim and the society. Fair trial obviously would mean a trial before an impartial Judge, a fair prosecutor and atmosphere of judicial calm. Fair trial means a trial in which bias or prejudice for or against the accused, the witnesses, or the cause which is being tried is eliminated. If the witnesses get threatened or are forced to give false evidence that also would not result in a fair trial. The failure to hear material witnesses is certainly denial of fair trial.”

When CW1 Dr. Inderjit Singh was present and examined in chief, it was the duty of the Court to procure his presence. On that day, his evidence could not be recorded in complete due to the request of learned defence counsel. In these circumstances, closing evidence by

order is arbitrary and without any acceptable reason. Thus, the impugned orders suffer from illegality, irregularity and infirmity and are, therefore, not sustainable.

In view of the above, this petition is accepted and impugned orders dated 5.12.2016 and 19.8.2016 are set aside. Learned Magistrate is directed to afford three effective opportunities to the complainant to produce the witnesses. However, learned trial Court shall summon the witnesses whose examination-in-chief has already been recorded.

February 12, 2019
Paritosh Kumar

(RAJ SHEKHAR ATTRI)
JUDGE

<i>Whether speaking/reasoned:</i>	<i>Yes/No</i>
<i>Whether Reportable:</i>	<i>Yes/No</i>