

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

**CRM-M-49535-2017
Date of decision: 13.11.2019**

Chiman Singh

...Petitioners

Versus

State of Punjab and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present:- Mr. L. S. Sidhu, Advocate
for the petitioner.

Mr. Joginder Pal Ratra, DAG, Punjab.

Mr. Amandeep S. Saini, Advocate
for respondent Nos. 2 to 7.

ARVIND SINGH SANGWAN, J. (Oral)

Prayer in this petition is for setting aside the order dated 08.12.2017 (Annexure P-3), passed by the trial Court, vide which, the application filed by the petitioner/complainant, under Section 311 Cr.P.C., for summoning two witnesses, namely ASI Jaspal Singh and HC Satnam Singh, as prosecution witnesses in FIR No. 223 dated 11.08.2014, under Sections 326, 324, 323, 148, 149 of the IPC, Police Station Dharamkot, District Moga, was dismissed.

Learned counsel for the petitioner submits that when the case was fixed recording the statement of prosecution witnesses on 06.07.2017, the trial Court closed the prosecution evidence by order. Therefore, the prosecution filed an application, under Section 311 Cr.P.C., for summoning the remaining four witnesses on 03.10.2017. Consequently, on 03.10.2017, two prosecution witnesses, namely ASI Jaspal Singh and HC Satnam Singh,

were present in Court and were bound down for the next date as the Court time was over on that day. Learned counsel for the petitioner relies upon order dated 0310.2017, in which it was observed that the aforesaid two witnesses could not be examined as Court time was over.

Learned counsel for the petitioner further submits that thereafter, aforesaid two witnesses were summoned for 01.11.2017, however, on that date, Presiding Officer was on leave and the case was adjourned for 01.12.2017, on which date, the aforesaid two witnesses did not appear despite the fact that they were bound down by the Court and consequently, the prosecution evidence was again closed by Court order.

Learned counsel for the petitioner further submits that thereafter, the petitioner/complainant moved an application, under Section 311 Cr.P.C., for summoning the aforesaid two witnesses as the trial Court, without appreciating the orders passed on the previous dates and difficulty in examining these witnesses, had closed the prosecution evidence. It is further submitted that though a plausible explanation was given in the said application for summoning the aforesaid witnesses, however, the same was dismissed by the trial Court without appreciating the fact that on one date, these witnesses were though present but on account of paucity of time, the trial Court itself adjourned the case and on the next date of hearing when they were bound down, the Presiding Officer had proceeded on leave.

Learned counsel for the petitioner further submits that on the date when the prosecution evidence was closed by Court order on 01.12.2017, the trial Court did not make any effort to procure the presence of aforesaid two witnesses by any coercive method as they were bound down on the previous

date to appear on that date.

Learned State counsel, on instructions from ASI Satpal Singh, has not disputed the factual position.

Learned counsel for respondent Nos. 2 to 7 has, however, opposed the prayer of the petitioner on the ground that on two previous occasions when the prosecution evidence was to be led and the aforesaid witnesses did not appear, the trial Court was justified in closing the prosecution evidence.

After hearing learned counsel for the parties, I find merit in the present petition as it is now well settled principle of law that in order to come to a just and fair conclusion to do justice, the power under Section 311 Cr.P.C. can be exercised at any stage by the trial Court.

In the present case, despite the fact that aforesaid two witnesses were present on the previous dates when the case was adjourned due to paucity of time and on another occasion, the Presiding Officer was himself on leave and for that reason, their statements could not be recorded, hence, the trial Court was not justified in dismissing the application moved by the petitioner under Section 311 Cr.P.C.

Accordingly, the present petition is allowed. Impugned order dated 08.12.2017 (Annexure P-3), passed by the trial Court, is hereby set aside.

The trial Court is directed to grant one effective opportunity to prosecution to record the statement of the aforesaid witnesses and in order to ensure the presence of the witnesses, the Senior Superintendent of Police, Moga is directed to make sure that these witnesses are served, summoned and

appear before the trial Court on the date to be fixed for the purpose of recording of their statement.

13.11.2019

Waseem Ansari

(ARVIND SINGH SANGWAN)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No