

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

CRM-M-8573-2017 (O&M)
Date of Decision:- 7.11.2019

Navneet Kaur ... Petitioner

Versus

State of Punjab and others ... Respondents

CORAM: HON'BLE MR. JUSTICE GURVINDER SINGH GILL

Present:- Mr. P.S.Ahluwalia, Advocate for the petitioner.

Ms. Rashmi Attri, AAG, Punjab.

Mr. Gangandeep Grewal, Advocate for respondent No.2 & 4.

None for respondent No.3.

GURVINDER SINGH GILL, J.

1. The petitioner has approached this Court challenging order dated 17.2.2017 passed by learned Additional Sessions Judge, Patiala whereby a revision petition filed by the petitioner-complainant Navneet Kaur challenging order dated 9.11.2016 declining an application under Section 311 Cr.P.C. filed on behalf of State, has been dismissed.
2. A few facts, necessary to notice for disposal of this petition, are that petitioner lodged FIR No.527 dated 1.11.2008, Police Station Sadar, District Patiala under Sections 406/498-A IPC against her husband Jatinder Singh, her father-in-law Hari Singh and Parneet Kaur alleging therein that the said accused had been harassing her in order to press upon their demands of more

dowry and had treated her with cruelty and had also misappropriated the articles of her '*istridhan*' entrusted to them.

3. Upon conclusion of investigation, challan was presented and charges were framed against the accused for offences punishable under Sections 406/498-A IPC. After the prosecution had been able to examine 5 PWs, a last opportunity was afforded to the prosecution vide order dated 21.5.2016 so as to conclude its evidence. Vide order dated 20.10.2016, the learned JMIC, Patiala, upon finding that the prosecution had been unable to secure the presence of the remaining PWs including the Investigating Officer ASI Gurwinder Singh, closed its evidence by order.
4. The State moved an application under Section 311 Cr.P.C. before the trial Court seeking summoning of ASI Gurwinder Singh, Jagdish Kumar and Gurdeep Singh. While ASI Gurwinder Singh had been cited in the list of witnesses, Jagdish Kumar and Gurdeep Singh, whose statements were stated to have been recorded during the course of investigation had not been included in the list of witnesses. The said application was opposed by the accused mainly on ground of delay as a period of 8 years had elapsed ever since registration of the FIR. The trial Court while observing that the application had been moved belatedly and that the prosecution had not ever challenged order dated 20.10.2016 closing prosecution evidence by order, dismissed the application vide order dated 9.11.2016.
5. The petitioner challenged the aforesaid order dated 9.11.2016 as well as order dated 20.10.2016 by way of filing a Criminal Revision which was also dismissed by the learned Additional Sessions Judge, Patiala vide impugned order dated 17.2.2017.

6. The learned counsel for the petitioner, while assailing the initial order closing evidence of the prosecution i.e. order dated 20.10.2016 as well as order declining application under Section 311 Cr.P.C. and the impugned order dated 17.2.2017 has submitted that it is a case where the Investigating Officer has intentionally chosen not to appear in the Court despite having been duly served in order to extend undue benefit to the accused who on account of non-examination of the Investigating Officer would be the beneficiaries as the case of the prosecution would stand weakened for want of proof as regards various documents prepared during investigation including recovery memos etc.
7. The learned counsel has submitted that the complainant cannot be made to suffer on account of the intentional lackluster approach of the prosecution. It has further been submitted that although the learned Additional Sessions Judge vide order dated 17.2.2017 had ordered for conducting departmental proceedings against the police official concerned but it has now been learnt by the petitioner that the said proceedings had been dropped on account of efflux of time.
8. Opposing the petition, the learned counsel for respondent No. 2 and 4 has submitted that the prosecution had been afforded ample opportunities to conclude its evidence and it was only upon noticing that the prosecution despite sufficient opportunities had failed to conclude its evidence that the evidence was closed by order on 20.10.2016.
9. It has further been submitted that since the initial impugned order dated 20.10.2016 closing the evidence by order was never challenged, therefore,

an application under Section 311 Cr.P.C. could not be held to be maintainable for recalling those very witnesses.

10. The learned State counsel has submitted that the State would abide by whatever directions that are issued by this Court and has not seriously opposed the petition, being not strictly directed against the prosecution.

11. I have considered rival submissions addressed before this Court.

12. In the present case, there is certainly no doubt that the trial has been pending since long. While charges were framed initially on 10.6.2009 but subsequently, on account of an application under Section 319 Cr.P.C. having been accepted, fresh charges were framed on 15.7.2015. After framing of charges on 15.7.2015, the prosecution led its evidence but since the evidence could not be concluded despite several opportunities, the trial Court closed the evidence of prosecution vide order dated 20.10.2016, i.e. after about 1 year and 3 months from framing of charges on 15.7.2015.

13. Although, the delay on the part of prosecution cannot be appreciated but the fact remains that it is a case where ASI Gurwinder Singh despite having been duly served did not choose to appear, which is certainly a cause of concern as the said absence appears to be deliberate and the Court cannot shut its eyes to such like conduct. At the same time, the Court is also fully conscious of the fact that the accused is also entitled to right to a speedy trial. The non-examination of the Investigating Officer, in the present case, wherein charges in respect of offence under Section 406 IPC have also been framed regarding misappropriation of articles of dowry, would seriously prejudice the case of the prosecution as the prosecution would not be able to prove the factum of recoveries as well as documents prepared during the

course of investigation including recovery memos. The conduct of the witness ASI Gurwinder Singh would be evident from the following observations recorded by the Court of Additional Sessions Judge, Patiala :-

“Be that as it may, what is most disturbing in the record of this file is that the summons to ASI Gurwinder Singh i.e. the investigating officer of the present case were sent numerous times by the learned trial court. Even the same were served also at various occasions. The learned trial court also issued bailable warrants. There is also a Zimini order on the file reflecting the attachment of salary of this witness. But surprisingly enough, despite all this, the said witness has failed to appear and depose in the court for the reasons best known to him.”

14. Having regard to the facts and circumstances of the case, this Court finds that there is no case for summoning of PWs Jagdish Kumar and Gurdeep Singh whose names are not even find mentioned in the list of witnesses. Consequently, there is no infirmity in the order of the trial Court as far as the same relates to declining summoning of said two witnesses. However, as far as the case of summoning ASI Gurwinder Singh, Investigating Officer is concerned, though the ideal course open to the prosecution was to have challenged the order dated 20.10.2016 immediately instead of filing an application under Section 311 Cr.P.C. but since in any case, this Court is presently seized of the matter where the said order dated 20.10.2016 is also impugned and finds that the prosecution deserves to be given one more opportunity especially upon finding that deliberate attempt seems to have been made to decimate the case of prosecution. The petition is hereby

accepted and the impugned orders are hereby set aside including order dated 20.10.2016 in so far as the same pertain to closing of the evidence of prosecution by order. One effective opportunity is afforded to the prosecution to examine the Investigating Officer ASI Gurwinder Singh. Since it has been informed by the learned State counsel that ASI Gurwinder Singh, after his retirement, has perhaps gone abroad, therefore, in case it is found that ASI Gurwinder Singh has gone abroad and is not expected to return in immediate future then it shall be open to the prosecution to move an application under Section 311 Cr.P.C. so as to summon any other witness, who is conversant with the handwriting/signatures of ASI Gurwinder Singh so as to prove the documents prepared by him during the course of investigation conducted by ASI Gurwinder Singh. It is, however, directed that the entire exercise be conducted expeditiously. Special messengers may be deputed for effecting service. Since, there is already delay in conclusion of trial, SSP Patiala is also directed to render necessary assistance for getting the summons served upon the witness(s) concerned. It is hoped that the trial Court shall take all necessary steps in an endeavour to conclude the trial expeditiously, preferably within six months from today.

15. The petition stands accepted in above mentioned terms.

7.11.2019

kamal

(Gurvinder Singh Gill)
Judge

Whether speaking /reasoned

Yes / No

Whether Reportable

Yes / No