

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

CRR-2210-2019 (O&M)
Date of Decision:- 5.9.2019

Deepa @ Nisha and others ... Petitioners

Versus

State of Haryana and another ... Respondents

CORAM: HON'BLE MR. JUSTICE GURVINDER SINGH GILL

Present:- Mr. G.C.Shahpuri, Advocate for the petitioner.

GURVINDER SINGH GILL, J.

1. The petitioner has approached this Court challenging judgement dated 3.7.2019 passed by the Court of Additional Sessions Judge, Ambala whereby while hearing the appeal against judgment dated 15.9.2015 passed by JMIC, Ambala challenging acquittal of the accused, the said judgment dated 15.9.2015 has been set aside and the matter has been remanded back to the trial Court for a fresh decision after giving atleast two effective opportunities to the prosecution to examine the complainant and other prosecution witnesses.
2. The learned counsel for the petitioner while assailing the impugned judgment has submitted that in the present case, the petitioner has been facing prosecution since the last about 9 years and it was in November, 2010 that the FIR came to be lodged and that despite the prosecution having been afforded ample opportunities to conclude its evidence, the prosecution had failed to examine the complainant and other witnesses and consequently, it

was on account of the said default of the prosecution that the evidence of prosecution was closed by order leading to acquittal of the accused.

3. The learned counsel, in this regard, has referred to various zimini orders annexed with this petition. In the present case, charges were framed against the accused on 22.8.2012. The matter was thereafter adjourned for about 15 times for enabling the prosecution to lead evidence and during the course of which 3 PWs were examined. The matter was adjourned on a couple of occasions on out of request received from some PWs for their exemption. The majority of adjournments are attributable to the fact that summons/bailable warrants were not served upon the PWs, which is essentially a lapse on part of serving agency. A perusal of orders passed during the last one year prior to closing of evidence would show that PWs were repeatedly remained unserved. On 13.11.2014, no PW was present and bailable warrants for securing their presence were issued for 7.1.2015. As per order dated 7.1.2015, none of the PWs had been served and the matter was adjourned to 16.2.2015. On 16.2.2015, neither any PW had been served and nor the accused Vikas was present and an application for his exemption was accepted. Even on the next date i.e. on 23.2.2015, no PW was present, as none was reported to be served and consequently, bailable warrants was issued for effecting service upon the witnesses. Thereafter, on the next date i.e. on 4.4.2015, the Presiding Officer was availing leave and consequently, it was on 4.5.2015 that the matter was taken up on which date one PW was present and the remaining PWs were ordered to be summoned for 11.6.2015. On 11.6.2015, the case had been transferred to another Presiding Officer. However, even on the said date, the presence of witnesses had not been

secured. On 28.7.2015, one PW, who was present was examined and the matter was adjourned to 10.9.2015 on which date the evidence of prosecution was closed by order.

4. A perusal of the aforesaid zimni orders as recorded by the trial Court would show that the matter was adjourned on several occasions to enable the prosecution to lead evidence. However, it appears that despite several adjournments, the witnesses could not be served. It is the prime responsibility of the prosecution to secure the presence of the witnesses. It was for a little less than 3 years that the matter remained pending before the trial Court i.e. from 2012 upto 10.9.2015 for the purpose of recording prosecution evidence and during which period the matter was adjourned for almost 15 occasions.
5. While the lackluster approach of prosecution can hardly be appreciated, the complainant cannot be made to suffer on out of lackadaisical efforts of serving agency in getting the summons served, which at times furnish reasons for casting aspersions suggesting some ulterior motive in not getting the summons served. In the present case, it appears that the complainant or her witnesses were not aware about many of the dates fixed for recording their statements. In these circumstances, the order closing evidence which virtually has the effect of scuttling short the prosecution of the accused to the prejudice of the complainant is rather harsh. The trial Court having chosen to remand the matter back for a fresh decision while directing the trial Court to afford atleast two effective opportunities for recording the statements of the remaining PWs cannot be said to be perverse. Consequently, this Court does not find any infirmity in the impugned order

and the same is hereby affirmed. The prosecution is directed to strictly comply with the order directing to grant two effective opportunities to the prosecution to conclude its evidence and to dispose of the matter thereafter at the earliest.

6. The revision petition is disposed of accordingly.

5.9.2019

kamal

(Gurvinder Singh Gill)
Judge

Whether speaking /reasoned

Yes / No

Whether Reportable

Yes / No