

**CRM No.2156 of 2020 in/and
CRR No.120 of 2020**

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

**CRM No.2156 of 2020 in/and
CRR No.120 of 2020
Date of decision:28.01.2020**

Sita Ram

... Petitioner

Vs.

State of Punjab

... Respondent

CORAM: HON'BLE MR. JUSTICE SUVIR SEHGAL

Present:- Mr. G.S.Sandhu, Advocate
for the applicant/petitioner.

Mr. Ramdeep Partap Singh, DAG, Punjab.

SUVIR SEHGAL, J. (Oral)

The petitioner has filed this petition under Section 401 of the Code of Criminal Procedure, 1973 (for short 'Cr.P.C.') challenging the impugned order dated 07.01.2020 whereby evidence of the prosecution was closed by the Court order.

Learned counsel for the parties have been heard and paper book of the revision petition has been perused with their assistance.

Learned counsel for the petitioner has submitted that FIR No.101 dated 25.10.2014 under Sections 307, 326, 324, 323, 341, 148 and 149 of Indian Penal Code, 1860 registered at Police Station Tapa on the statement of the petitioner against Jagmail Singh @ Sheera and others for causing injuries to his father Surinder Kumar, Somnath Sharma son of Surinder Kumar and Yadav Sharma son of Sita Ram. After investigation, report under Section 173 Cr.P.C.was filed against all the accused except

Jasvir Singh son of Puran Singh, who was summoned as an additional accused under Section 319 Cr.P.C. He further submits that during the pendency of trial, Investigating Officer, ASI Jagtar Singh and MHC Baljinder Singh had expired, therefore, an application dated 20.08.2019 (Annexure P-1) under Section 311 Cr.P.C was filed by the prosecution for recalling two witnesses, including, HC Jaswinder Singh who was a recovery witness of the weapons and weapons had been deposited in the Malkhana in his presence.

The application was opposed by the accused by filing reply (Annexure P-2) on the ground that the prosecution had give up HC Jaswinder Singh. Vide order dated 07.12.2019 (Annexure P-3), learned Additional Sessions Judge, Barnala partly allowed the application and permitted the prosecution to examine HC Jaswinder Singh. The said witness was duly served for 07.01.2020 but instead of appearing before the Court on the said date, he sent a request that he was busy in investigation of another FIR. However, instead of securing his presence, learned Additional Sessions Judge, closed the evidence of the prosecution, vide impugned order dated 07.01.2020. The petition is not opposed by the counsel for the State.

I have considered the submissions. A perusal of the impugned order shows that witness HC Jaswinder Singh had been permitted to be examined in pursuance to the order dated 07.12.2019 (Annexure P-3), relevant portion of which is reproduced as under:-

“Perusal of the file reveals that earlier also prosecution has moved an application under Section 311 Cr.P.C., for

summoning SI Malkiat Singh on the premise that IO ASI Jagtar Singh has expired and thus part of the investigation was to be proved through the examination of SI Malkiat Singh, the then SHO and said application was allowed on 17.2.2018 by the then Additional Sessions Judge, Barnala. Further perusal of the file shows that on 28.02.2019 a report was received on the summons issued for the service of ASI Jagtar Singh that he has died. Even copy of his death certificate is also there on the file whereas MHC Jaswinder Singh was given up much prior to the receipt of such report i.e. On 19.12.2017 as is clear from the interim date of even date. Thus, one thing is clear that HC Jaswinder Singh was given up before the report regarding the death of ASI Jagtar Singh could be received. Thus, his examination in the Court in my view is quite essential. Hence, this part of the request of the prosecution needs to be appreciated.”

The said witness had been duly served for 07.01.2020 but he did not appear, which resulted in the passing of impugned order.

When a summoned witness fails to appear before the Court for his examination, it is the duty of the Court to secure his presence and the Court is not helpless in such a situation. Non-appearance of a witness should not have any adverse impact on the evidence being led by a party. Reference is made to a judgment passed by a Co-ordinate Bench of this Court in **Sandeep Mehra @ Babi Vs. Chander Parkash Madan 2019(4) RCR (Criminal) 570** wherein it has been held that the petitioner cannot be punished for the fault of the witness and in case, witness fails to appear despite service, the trial Court must adopt coercive steps to secure his presence.

In Om Parkash Vs. State of Haryana and others 2015(3) RCR (Criminal) 557, this Court has held that instead of closing the prosecution evidence, the trial Court should have taken coercive steps to secure the presence of un-examined prosecution witnesses so that ends of justice are met.

In view of the above, it is clear that impugned order dated 07.01.2020 whereby prosecution evidence has been closed and the matter has been adjourned for recording of statement of the accused persons under Section 313 Cr.PC cannot be sustained. Accordingly, the impugned order dated 07.01.2020 is set aside. The trial Court is directed to take necessary steps to summon the witness, namely, HC Jaswinder Singh, for recording his statement by giving one effective opportunity to the prosecution.

Revision petition is allowed in the above terms. Since the revision petition is disposed of, no order is required to be passed in CRM No.2156 of 2020. No order as to costs.

(SUVIR SEHGAL)
JUDGE

January 28, 2020
savita
Whether Speaking/Reasoned
Whether Reportable

Yes/No

Yes/No