

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

CRM-M-7506 of 2019

DATE OF DECISION :- March 12, 2020

Dharmender Sharma and another

...Petitioners

Versus

State of Haryana and others

...Respondents

CORAM: HON'BLE MR. JUSTICE H.S. MADAAN

Present:- Mr. Tanmoy Gupta, Advocate for the petitioners.

Ms. Harpreet Kaur, AAG, Haryana.

By way of filing the present petition under Section 482 Cr.P.C. complainants Dharmender Sharma and Kultar Singh pray for setting aside of order dated 19.12.2018 passed by Judicial Magistrate Ist Class, Gurugram vide which evidence of the prosecution was closed by order as well as order dated 5.1.2019 passed by that very Magistrate in terms of which application under Section 311 Cr.P.C. filed by the complainant had been dismissed.

Notice of the petition was given to the respondents. State of Haryana has put in appearance through counsel and she is rather supporting the case of the complainant whereas the private respondents accused have not appeared despite service.

I have heard learned counsel for the petitioners and learned State counsel besides going through the record.

I find that though the prosecution has availed of several opportunities to conclude evidence but the trial Magistrate has not made proper

efforts to procure the presence of the prosecution witnesses and has closed the evidence of prosecution in a hurried manner. As far as the PWs summoned who were not served, the Magistrate should have directed the prosecution to supply the correct latest addresses of those prosecution witnesses or depute some responsible official to get the service effected. The matter could have been taken up with the police head of the District in that regard. It seems that the request by the defence counsel that prosecution evidence be closed evade heavily on the mind of learned Magistrate and without considering the other aspects the evidence was closed by order. The said order passed is without justification and as such requires to be set aside for the purpose of doing substantial justice.

Therefore, the petition is accepted. The impugned orders are set aside with a direction to the trial Magistrate to allow at least two effective opportunities to the prosecution to examine the remaining prosecution witnesses. Requisite time be give for that purpose. The trial Magistrate would make earnest efforts to get the necessary service effected upon the prosecution witnesses and if need be coercive process be also used. The prosecution is directed to take proper interest in getting the service effected upon the prosecution witnesses and make sincere efforts to cause their appearance in the Court. If need be the trial Court may give one more opportunity. Thereafter, the trial may proceed in accordance with law.

(H.S. MADAAN)
JUDGE

March 12, 2020
p.singh

Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No