

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

122

CRM-M-10969-2022 (O&M)
Date of Decision: 16.03.2022

Jaswant Singh and another

...Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE GURVINDER SINGH GILL

Present: Mr. Ashok Kumar Khunger, Advocate, for the petitioner.

(proceedings conducted through video conferencing)

GURVINDER SINGH GILL, J. (Oral)

1. The petitioners assail order dated 02.03.2022 vide which the trial Court has closed the defence evidence and has posted the matter for arguments. Learned counsel for the petitioners submits that it was on 03.01.2022 that the prosecution closed its evidence and on which date statement of the accused under Section 313 Cr.P.C. was also recorded and the matter was adjourned to 05.01.2022 for recording defence evidence.
2. Learned counsel submits that on the very first date i.e. on 05.01.2022, an application for summoning DWs was filed and the requisite fee was also deposited and thereafter the matter was adjourned to 17.01.2022 vide order dated 05.01.2022 (Annexure P-4). Learned counsel has submitted that on 17.01.2022, none had appeared and the matter was further adjourned and it is specifically recorded in the order dated 17.01.2022 that the Courts are working in a restrictive

manner on account of spread of pandemic COVID and consequently the matter was again adjourned to 24.01.2022. It has been submitted that a similar order for adjournment on account of restrictive working of the Courts was passed on 24.01.2022 adjourning the matter to 02.03.2022 on which date the impugned order (Annexure P-7) came to be passed.

3. Learned counsel for the petitioners submits that the petitioners have been doing all that was possible within their means and undertake that they shall take additional *dasti* summons also to get the witnesses served.
4. Notice of motion.
5. At this stage, Mr. Anmol Singh Sandhu, AAG, has put in appearance and accepts notice on behalf of respondent.
6. This Court finds that from 5.1.2022 i.e. the first date fixed for recording defence evidence upto 2.3.2022 when defence evidence was closed by order i.e. during a period of 2 months, the accused had availed of 3 opportunities to lead evidence in defence. The accused had submitted an application for summoning DWs on the very first date i.e. on 5.1.2022 seeking summoning of as many as 5 witnesses, 2 of which are government Doctors while other 2 are office bearers of the Gram Panchayat i.e. Sarpanch and Secretary. The presence of none of these witnesses is recorded in the *zimini* orders placed on record. Rather, there is a reference to restrictive functioning of the Court on account of spread of pandemic COVID. In these circumstances, the petitioners-accused cannot be found at fault for not having led defence evidence as the presence of the DWs could not be secured. The impugned order, as such, is set aside.

7. Fresh summons be issued for securing presence of the Dws through special messenger. An additional set of summons be also issued for effecting service by *dasti* process.
8. Petition stands accepted accordingly.
9. A copy of this order be conveyed to the trial Court.
10. List on 28.4.2022 to await compliance. Report of trial Court be called for.
11. To be shown in urgent list.

16.03.2022

(GURVINDER SINGH GILL)

VY

JUDGE

Whether speaking/reasoned: **Yes/No**

Whether reportable: **Yes/No**