

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

**CRM-M-8636-2020(O&M)
Date of Decision:17.05.2022**

Vinay Verma

... Petitioner

Versus

State of Punjab and others

... Respondents

CORAM: HON'BLE MR. JUSTICE KARAMJIT SINGH

Present:- Mr. A.S Salar, Advocate
for Mr. S.S Salar, Advocate
for the petitioner.

Mr. H.S. Multani, AAG, Punjab.

None for respondents No.2 and 3.

KARAMJIT SINGH, J.

The present petition has been filed by the petitioner (complainant) for quashing of order dated 16.12.2019, Annexure P-17, whereby the prosecution evidence was closed by order by the trial Court and order dated 23.01.2020, whereby the application filed by the prosecution/ complainant under Section 311 Cr.P.C. for permission to examine Inspector Ravinder Singh, ASI Satnam Singh, Dr. Dipesh, Dr. Paramdeep Singh, ASI Janak Raj, Sanjeev Gupta, Ajay Kumar and Sukhwinder Singh was dismissed.

On notice of motion, the State Counsel has put in appearance on behalf of State of Punjab.

The counsel for the petitioner contends that the FIR in the present case was registered in 2011 against respondents No.2 and 3. The counsel while referring to the different zimni orders which are available on record, contends that the trial Court kept on passing orders to summon the prosecution witnesses in a very casual manner without going through the reports made by the concerned serving police officials with regard to service of prosecution witnesses. The counsel further contends that the trial Court had not made any sincere efforts or taken coercive steps to secure the presence of unexamined prosecution witnesses including Ajay Kumar eye-witness. The counsel for the petitioner further contends that now respondents No.2 and 3 are absconding. He further contends that the non-application of mind by the trial Court has caused grave prejudice to the petitioner and as such, impugned order Annexure P-17, deserves to be set aside.

The counsel further contends that the trial Court was having vast powers under Section 311 Cr.P.C to summon the remaining unexamined witnesses. However, the trial Court dismissed the application moved by the prosecution/complainant under Section 311 Cr.P.C in a casual manner, vide impugned order dated 23.1.2020, Annexure P-18, by simply saying that the trial Court has got no jurisdiction to review its own order. The counsel further contends that even order Annexure P-18, deserves to be set aside being totally illegal.

The State counsel who has not opposed the present petition, brought to the notice of this Court that at present respondent No.2 and 3 are absconding and proceedings to declare them as proclaimed offenders have been initiated against them.

I have gone through both the impugned orders and considered the submissions made by counsel for the petitioner.

The zimni orders passed by the trial Court dated 4.11.2019, 18.11.2019, 02.12.2019 and 16.12.2019 are hereby reproduced:-

“Present: APP for the State

Accused Swaranjeet Singh on bail.

Accused Mandeep Singh on bail (but in custody in some another case).

Represented by Sh. I.S Bhanohar, Advocate.

Accused Mandeep Singh not produced by the jail authorities. His production warrants be issued for 18.11.2019.

No PW is present. Let, fresh non-bailable warrant of PWs Inspector Ravinder Singh, Sanjeev Gupta, Ajay Kumar be issued for 18.11.2019. Fresh summons to PWs Sukhwinder Singh, Dr. Dipesh Batra, Dr. Paramdeep Singh and ASI Satnam Singh be issued for the date fixed through CP Ludhiana. One special set of summons be also issued to APP for the State.

*Date of order
4.11.2019*

*Sd/- Gurpreet Singh
CJJD/Ludhiana
(UID Code:-PB0406)”*

“Summons to PWs not issued inadvertently.

Sd/-”

Present: APP for the State

*Accused Swaranjeet Singh on bail.
Accused Mandeep Singh on bail (but in custody in
some another case).
Represented by Sh. I.S Bhanohar, Advocate.*

*Accused Mandeep Singh produced by the jail
authorities. No PW is present. Let fresh non-bailable warrant
of PWs Inspector Ravinder Singh, Sanjeev Gupta, Ajay Kumar
be issued for 02.12.2019. Fresh summons to PWs Sukhwinder
Singh, Dr. Dipesh Batra, Dr. Paramdeep Singh and ASI Satnam
Singh be issued for the date fixed through CP Ludhiana. One
special set of summons be also issued to APP for the State.*

*Date of order
18.11.2019*

*Sd/- Gurpreet Singh
CJJD/Ludhiana
(UID Code:-PB0406)”*

“Present: APP for the State

*Accused Swaranjeet Singh on bail.
Accused Mandeep Singh on bail (but in custody in
some another case).
Represented by Sh. I.S Bhanohar, Advocate.*

*Accused Mandeep Singh produced by the jail
authorities. No PW is present. Let, fresh non-bailable warrant
of PWs Inspector Ravinder Singh, Sanjeev Gupta, Ajay Kumar
be issued for 16.12.2019. Fresh summons to PWs Sukhwinder
Singh, Dr. Dipesh Batra, Dr. Paramdeep Singh and ASI Satnam
Singh be issued for the date fixed through CP Ludhiana, subject
to last opportunity, failing which the evidence of prosecution
will be closed by order. One special set of summons be also
issued to APP for the State.*

*Date of order
2.12.2019*

*Sd/- Gurpreet Singh
JMIC/Ludhiana
(UID Code:-PB0406)”*

“Present: APP for the State

Accused Swaranjeet Singh on bail.

Accused Mandeep Singh on bail (but in custody in some another case).

Represented by Sh. I.S Bhanohar, Advocate.

Accused Mandeep Singh not produced by the jail authorities. No PW is present. Perusal of file reveals that charge against accused was framed on 08.10.2012 and since then, the case is pending for evidence of prosecution. More than 30 opportunities have already been availed by the prosecution but has failed to conclude the evidence so far. There is no justification to adjourn the case further and as such, evidence of prosecution is hereby closed by order. Now, case is adjourned to 21.12.2019 for recording the statement of accused u/s 313 Cr.P.C.

*Date of order
16.12.2019*

*Sd/- Gurpreet Singh
JMIC/Ludhiana”*

From the perusal of the aforesaid zimni orders which are available on record, it appears that the trial Court kept on passing the same in a mechanical manner without application of mind. As per the said zimni orders, it appears that the reports made by the concerned serving police officials on the summons/bailable warrants/non-bailable warrants which were ordered to be issued in the name of different PWs, were never gone through by the presiding officer.

The trial Court was not at the mercy of the prosecuting agency.

If the prosecuting agency was not taking due interest in prosecuting the case,

by producing the witnesses in time, the trial Court could have secured the presence of unexamined witnesses by taking appropriate steps, including the coercive steps, if so required, in an assertive manner, which requires application of mind. However, in the case in hand the trial Court kept on passing the zimini orders in a routine manner, without making any sincere efforts to procure the presence of unexamined witnesses which also included Ajay Kumar eye-witness.

The trial Court has got a participatory role to play and having been invested with enormous powers under Section 311 of Cr.P.C and the said statutory provision is reproduced herein below:-

“311. Power to summon material witness, or examine person *present*- Any Court may, at any stage of any inquiry, trial or other proceeding under this Code, summon any person as a witness, or examine any person in attendance, though not summoned as a witness, or recall and re-examine any person already examined; and the Court shall summon and examine or recall and re-examine any such person if his evidence appears to it to be essential to the just decision of the case.”

In the instant case, as has been discussed earlier, it appears that the trial Court was in a great hurry in rejecting the application moved by the prosecution/complainant without actually relying on wide powers conferred on it under Section 311 Cr.P.C.

In the light of above, this Court is of the considered view that both the impugned orders suffer from patent illegality and thus cannot be sustained. Accordingly, the orders dated 16.12.2019, Annexure P-17 and

23.01.2020, Annexure P-18, passed by the learned trial Court are hereby set aside.

Consequently, the learned trial Court is directed to examine all the remaining unexamined material witnesses including Ajay Kumar eye-witness, by taking appropriate and sincere steps in accordance with law. The learned trial Court could also take the assistance of office of learned District and Sessions Judge, Ludhiana as well as Commissioner of Police, Ludhiana to procure the presence of unexamined material witnesses. The learned Trial Court shall make an endeavor to conclude the prosecution evidence at the earliest as the present case is relating to FIR which was registered in the year 2011.

17.05.2022
P. Chawla

(KARAMJIT SINGH)
JUDGE

Whether reasoned / speaking? Yes / No

Whether reportable? Yes / No