

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M No.27246 of 2016

Date of Decision: 14.02.2022.

Kapil Kumar

...Petitioner

Versus

State of Punjab & Others

...Respondents

(Heard through Video-Conferencing)

CORAM: HON'BLE MRS. JUSTICE MEENAKSHI I. MEHTA

Present: Mr. Gurmohan Singh Bedi, Advocate,
for the petitioner.

Ms. Samina Dhir, Deputy Advocate General, Punjab,
for respondent No.1-State.

Mr. Prashant Bansal, Advocate,
for respondents No.2 to 4.

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MEENAKSHI I. MEHTA, J.

By way of the present petition, the petitioner has invoked the jurisdiction of this Court for seeking the quashing of the order dated 20.07.2016 (Annexure P-7) passed by learned Judicial Magistrate Ist Class, Patiala, whereby the evidence of the prosecution has been closed and also of the order dated 14.06.2016 (Annexure P-5) rejecting/dismissing the application as moved by him under Section 311 Cr.P.C for his own re-examination as well as for summoning the eye-witnesses named Naveen Kumar and Narinder Kumar as prosecution witnesses and he has further prayed for issuing the appropriate direction to the trial Court to afford one effective opportunity to him and the above-said witnesses to appear and be

examined as the prosecution witnesses.

2. Shorn and short of unnecessary details, the facts, culminating in the filing of the instant petition, are that a criminal case was registered against respondents No.2 to 4 at Police Station Shambhu, Patiala, vide FIR No.90 dated 16.09.2011 under Sections 323, 341, 506 read with Section 34 IPC, at the instance of the petitioner. After presentation of the Challan and framing of the charges, the prosecution witnesses were summoned by the trial Court and the petitioner himself stepped into the witness box as PW-1 and was so examined. He also made a statement for giving up both the above-named eye-witnesses. However, on 01.06.2016, he moved an application under Section 311 Cr.P.C with a prayer for his own re-examination and for summoning both the above-said prosecution witnesses, while averring that he had made depositions and had given up the afore-named witnesses under threat at the hands of accused-respondents No.2 to 4. Vide the impugned order Annexure P-5, the above-said application was dismissed.

3. However, thereafter, the summons were issued to both the above-named witnesses who appeared in the Court on 20.07.2016 but vide the impugned order Annexure P-7, the trial Court closed the evidence of the prosecution on that day without examining them. Then, the petitioner moved an application before the Chief Judicial Magistrate for seeking the transfer of the above-said case to some other Court which was allowed.

4. Respondent No.1-State has filed its short Reply by way of the affidavit of Deputy Superintendent of Police, Ghanour whereas respondents

No.2 to 4-accused have preferred to file their joint Reply to this petition.

5. I have heard learned counsel for the petitioner, learned State counsel as well as learned counsel for respondents No.2 to 4 in this petition and have also gone through the file thoroughly.

6. Learned counsel for the petitioner has contended that the petitioner had moved the said application under Section 311 Cr.P.C for his own re-examination and also for summoning and examining both the said persons as the prosecution witnesses in this case because on the earlier occasion, he had made depositions as PW-1 and had given up the said eye-witnesses under the threat from respondents No.2 to 4-accused whereas his own re-examination as well as the testimonies of both the afore-named witnesses, being the eye-witnesses to the entire occurrence, are relevant and necessary for the proper decision of the case and therefore, the impugned order Annexure P-5 as passed qua the dismissal of the afore-mentioned application, is liable to be set aside. He has further contended that the impugned order Annexure P-7 as passed on 20.07.2016 for closing the prosecution evidence also deserves to be quashed because both the said witnesses were present in the Court on that day but were not examined. To buttress his contentions, he has placed reliance upon *Sanjeev Nanda vs. State of NCT of Delhi 2008(1) RCR (Criminal) 183 (Delhi HC), Fatehsinh Mohansinh Chauhan & Others vs. Union Territory of Dadra and Nagar Haveli, Silvassa & Another 2003(4) RCR (Criminal) 168 (Bombay HC)* and *Paul Singh vs. State of Haryana 2014(11) RCR(Criminal) 1798 (P&H HC).*

7. Per-contra, learned State counsel and learned counsel for respondents No.2 to 4 have argued that the petitioner had already made depositions as PW-1 and had also given up the afore-named prosecution witnesses out of his own free will and therefore, both the impugned orders as passed by learned trial Court, are well reasoned and perfectly legal.

8. The sole ground, as put-forth by the petitioner for seeking his own re-examination as well as for summoning and examining both the above-named prosecution witnesses in the Court, is that he himself had deposed and had given up these witnesses under the threat as extended by respondents No.2 to 4-accused to him but the fact remains that the petitioner had, concededly, been appearing before the competent Courts since prior to appearing and deposing as PW-1 before the trial Court in the present case. It being so, he cannot be presumed to be oblivious of the fact that he could approach the police or any other competent authorities to inform and seek suitable action in respect of the afore-alleged threat. He could have, at least, apprised the trial Court in this regard while appearing there as PW-1 and making the statement for giving up the said witnesses. However, there is nothing on the record to suggest that he ever availed any of these remedies. He has also not advanced any plausible, cogent, fair and candid explanation for his not doing so.

9. It has been held by the Apex Court in **Rajaram Prasad Yadav vs. State of Bihar and Another 2013(3) RCR (Criminal) 726** that “*where a prosecution witness deposed against the prosecution by making categorical statement and thereafter, requested for his re-examination while claiming*

that the evidence tendered by him earlier was not out of his own free will and volition but was due to threat and coercion at the instance of the accused persons, his application was not bona-fide and was by way of after-thought as he had every opportunity to mention the said fact to the trial Judge or the Prosecution Agency”. In view of these observations, the observations as made in Sanjeev Nanda (supra), Fatehsinh Mohansinh Chauhan & Others (supra) and Paul Singh (supra), are of no avail to the petitioner in this case.

10. As regards the closure of the evidence of the prosecution by the trial Court vide the impugned order Annexure P-7, it is pertinent to point it out here that the FIR was registered in the year 2011 and as specifically mentioned in para 4 of the short Reply filed on behalf of respondent No.1-State, the Challan was presented in the Court on 15.02.2012 and the trial Court has categorically observed in the said order that the prosecution had already availed numerous opportunities to conclude its evidence but had failed to do so and therefore, there was no justification for adjourning the case for the prosecution evidence. Though, it has also been mentioned in this order that both the above-named prosecution witnesses were present in the Court on that day but it has also been categorically explained therein that they were not examined as they had already been given up as such. Annexure P-3 is the copy of the order passed by the trial Court on 31.03.2016 specifically mentioning therein that the complainant, i.e the petitioner, had made a statement for giving up both the said prosecution witnesses in the case. It being so, the said impugned order, as passed on

20.07.2016, for closing the evidence of the prosecution without examining them, cannot be termed to be incorrect or unreasonable. So far as the order of learned Chief Judicial Magistrate concerned qua the transfer of the case is concerned, the same can, by no stretch of imagination, be taken to be sufficient ground to grant the relief as prayed for in this petition.

11. As a sequel to the fore-going discussion, it follows that both the impugned orders do not suffer from any illegality, irregularity or perversity so as to call for any interference by this Court. Resultantly, the petition in hand, being *sans* any merit, stands dismissed.

(MEENAKSHI I. MEHTA)
JUDGE

14th February, 2022.
seema

Whether speaking/reasoned?	Yes
Whether Reportable?	No