

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

**Neutral Citation No. 2023:PHHC:051921
CRM-M-17907-2023
Date of Decision: April 13, 2023**

Gurdip Kumar

...Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE DEEPAK GUPTA

Present:- Mr. Anurag Arora, Advocate for the petitioner.

DEEPAK GUPTA, J.(Oral)

Petitioner is aggrieved by the order dated 06.01.2023 (Annexure P-4) passed by learned Judicial Magistrate 1st Class, Jalandhar, whereby the evidence of the prosecution has been closed in a case arising out of FIR No.81, dated 02.08.2019, registered at Police Station Cantt. Jalandhar, District Police Commissionerate Jalandhar, under Sections 279, 337, 427 and 201 of IPC.

Attention is drawn by learned counsel towards the fact that challan was presented on 15.12.2021 and accused was charge-sheeted on 03.08.2022, as per Annexures P-2 and P-3 respectively. Examination-in-chief of PW4 Gurdip Kumar-petitioner was recorded on 22.09.2022, as per Annexure P-5. His cross-examination was deferred at the request of APP for the State, who had moved an application under Section 216 Cr.P.C. Said PW4 Gurdip Kumar as well as other witness PW2 ASI Jagiri Ram were bound for the next date. Learned counsel then pointed out towards order dated 10.10.2022, as per which cross-examination of PW4 and two more witnesses was deferred at the request of the accused. On 21.10.2022, the cross-examination of PW2 was recorded but examination of PW4 was recorded partly. His further cross-examination was again

deferred at the request of defence counsel. In the order dated 05.12.2022, it is mentioned by the Trial Court that cross-examination of PW4 Gurdip Kumar had been recorded. However, learned counsel has drawn attention towards the statement of PW4 Gurdip Kumar (Annexure P-6), which would reveal that his examination-in-chief was concluded on 10.02.2022 on which date his cross-examination was deferred. On 21.10.2022 and then on 05.12.2022, his cross-examination was again deferred. As per the statement recorded on 05.12.2022 of Gurdip Kumar, his remaining cross-examination was deferred as the Court time was over.

It is rightly pointed out by the counsel that it is clear from the aforesaid documents that statement of PW4 Gurdip Kumar was unconcluded and so it was wrongly mentioned by the Trial Court that his statement has been recorded.

Without completing the statement of PW4, the Trial Court closed the evidence of the prosecution on 06.01.2023, though there is nothing in the order to mention that PW4 had not appeared later. Even if, it is assumed that he had not appeared, his presence was required to be procured through due process, which was not done.

From the various zimni orders placed on record by the petitioner, it is evident that statement of PW4 Gurdip Kumar-petitioner was unconcluded. It has been wrongly observed by the Trial Court in the order dated 05.12.2022 that statement of PW4 Gurdip Kumar was recorded. Prosecution evidence appears to have been closed in tearing hurry.

Impugned order dated 06.01.2023 is accordingly set aside.

The Trial Court is directed to provide opportunity to prosecution to conclude the statement of PW4 Gurdip Kumar and then proceed further in accordance with law.

As such, present petition is allowed.

April 13, 2023
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(DEEPAK GUPTA)
JUDGE

Whether reasoned/speaking: Yes/No
Whether reportable: Yes/No