

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

(119)

CRM-M-21090-2023

Date of Decision:- 22.09.2023

Narinder Kumar Aggarwal

...Petitioner

VERSUS

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE SUVIR SEHGAL

Present:- Mr. Vishal Deep Goyal, Advocate for the petitioner.

Mr. Arun Luthra, Punjab for State-respondent.

SUVIR SEHGAL, J. (Oral)

1. By way of present petition filed under Section 482 of the Code of Criminal Procedure, 1973, petitioner is seeking setting aside of order dated 18.04.2023, Annexure P-3, passed by the learned Additional Sessions Judge, Ludhiana, vide which request of the petitioner for summoning Superintendent, NCB, Mumbai along with record regarding disposal of a case pending before the Special Judge, Mumbai, has been declined.
2. Counsel for the petitioner submits that petitioner was a partner with Jagdish Singh in a Rice Mill. After the relations between the parties turned sour, they separated. Jagdish Singh was apprehended by the Mumbai Police in a NDPS case and under the impression that the petitioner had got him arrested, he named the petitioner as an accused in a number of criminal cases. Counsel submits that the petitioner has been acquitted in some cases and one case is pending before the Special Court at Mumbai. While leading

defence evidence in FIR No.01 dated 01.01.2010, registered for offence under Section 21 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short “the NDPS Act”), at Police Station State Special Operation Cell, District Amritsar, Annexure P-1, pending trial before the Special Judge at Ludhiana, a list of witnesses dated 01.10.2019, Annexure P-2, was submitted, which included, Superintendent, NCB, Mumbai. Counsel submits that notices to the witnesses were issued by the Trial Court, but by impugned order dated 18.04.2023, Annexure P-3, the Trial Court has held that there is no necessity to call the Superintendent, NCB, Mumbai with the record. Counsel submits that the Trial Court has erred in rejecting the prayer as he is a material witness, who is required to be summoned in order to prove the innocence of the petitioner.

3. Opposing the petition, State counsel, upon instructions, submits that the sole object of the accused-petitioner for summoning the said witness is to show that he has been acquitted in the criminal case pending against him at Mumbai, but by exhibiting the judgment dated 21.08.2018, Annexure P-6, this fact stands established and there is no need for calling the said witness.

4. I have heard counsel for the parties and considered their respective submissions.

5. In his defence evidence, petitioner intends to summon an official from NCB, Mumbai to show false implication. During the pendency of the proceedings before the Court, petitioner has been acquitted by the Special Court, Mumbai by judgment, Annexure P-6. This judgment has been produced before the Trial Court by ASI, Ajmer Singh, who has made a statement regarding petitioner’s acquittal. It is further evident from the

impugned order that the proceedings of the Mumbai case have also been brought on the record and both the parties, i.e., the petitioner and the prosecution, have admitted before the Trial Court that the petitioner was nominated as an accused on the statement of Jagdish Singh. It is, therefore, clear that the acquittal of the petitioner in the Mumbai case stands established.

6. When the summons were issued to the defence witnesses in October, 2019, this development had not taken place. Once the judgment of the Mumbai Court has been exhibited and it has been categorically admitted by the prosecution that the petitioner has been acquitted under the NDPS Act by the Court at Mumbai, the objective for which the official is sought to be summoned, along with the record, stands achieved. His presence before the Court along with the record would not serve any additional purpose nor would it advance the case of the defence.

7. Sub-Section 3 of Section 233, Cr.P.C. vests a discretion with the Trial Court to issue process to compel the attendance of a witness. The Trial Court has power to refuse the issuance of process on grounds specified therein, which is clear from the use of word “may” used in this sub section. The Trial Court can refuse to summon a witness where it comes to the conclusion that the application is vexacious or has been made to delay the proceedings or to defeat the ends of justice. The trial in the present criminal case is pending for the last more than a decade. The evidence of the prosecution was closed by Court order on 22.08.2019 and the accused-petitioner entered his defence soon thereafter. However, despite a lapse of more than two years, the accused-petitioner has not concluded his defence evidence. It is, therefore, apparent that the insistence on the summoning of

the above mentioned witness is to delay the conclusion of the trial, which cannot be permitted.

8. For the aforementioned reasons, this Court does not find any merit in the instant petition, which is hereby dismissed.

9. Nothing said hereinabove shall be construed to be an expression of opinion on the merits of the case.

(SUVIR SEHGAL)
JUDGE

22.09.2023
Kamal

Whether Speaking/Reasoned	Yes/No
Whether Reportable	Yes/No