

CRM-M-50883-2022 (O&M)

1

241+108

2023:PHHC:166283

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

CRM-M-50883-2022 (O&M)

Date of decision : 05.05.2023

Randeep Singh

...Petitioner

Vs.

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE DEEPAK MANCHANDA

Present: Mr. Gurcharan Dass, Advocate
for the petitioner.

Mr. Gurdarshan Singh Sidhu, AAG, Punjab.

DEEPAK MANCHANDA, J.(Oral)

CRM-15003-2023

The instant application has been filed under Section 482 Cr.P.C for placing on record the order dated 21.02.2023 passed by the JMIC, Rupnagar as Annexure P-5.

For the reasons mentioned in the application, same is allowed and Annexure P-5 is taken on record subject to all just exceptions.

Main case

Petitioner-Randeep Singh has filed this petition under Section 482 of Cr.P.C seeking issuance of directions to the trial Court to expedite the trial proceedings, which are pending since last five years in Criminal Case CIS No.CHI 61 of 2020, dated 15.02.2020 titled as "State Vs. Randeep Singh and others" in FIR No.59 dated 21.03.2018 registered under Section 25 of Arms

Act, 1959 (Section 201 IPC added later on) at Police Station Sri Chamkaur Sahib, District Rupnagar.

As per last order, learned counsel for the petitioner contended that since 15.11.2021, no prosecution witness has been examined and even after eight adjournments, matter is still fixed for the same purpose. In support of his contention, learned counsel for the petitioner has referred to zimni orders in para No.6 of the petition.

Reply/status report dated 20.02.2023 by way of affidavit of Jarnail Singh, PPS, Deputy Superintendent of Police, Sri Chamkaur Sahib, District Rupnagar has been filed by the respondent-State and the same is taken on record.

Learned counsel for the petitioner draws attention of this Court to the orders passed during the proceedings and has also supplied a copy of the latest order dated 25.04.2023, where the matter is being adjourned for the presence of prosecution witness, who could not be examined till today and the next date fixed for the same is 28.07.2023.

The limited prayer made by the learned counsel for the petitioner in the present petition is that the directions be issued to the trial Court to expedite the trial keeping in view the delay being caused on account of non-examination of prosecution witnesses and the petitioner is suffering due to the delay. Keeping in view the facts stated above, where prosecution witnesses have not been examined till today, this Court is of the view that the petitioner should not suffer on said account as the right to expedite the trial mandates from the fundamental rights guaranteed under Article 21 of the Constitution of India. The primary issue in the present case is the non-appearance of the

official witnesses. A perusal of the order sheets of the trial Court shows that despite repeated opportunities neither serious efforts were made to produce and examine these witnesses nor any opportunity was sought to examine them through video conferencing. A perusal of the orders reveals that since 03.03.2021, the summons are being issued to prosecution witnesses mentioned at Sr. No.1 to 3 in the list of witnesses, who are official witnesses and till 25.04.2023 none of them have appeared inspite of issuance of repeated summons to them. The prosecution is duty bound to ensure that it leads its evidence in an expeditious manner, in which it has miserably failed in the present case. However, at the same time, it is the duty of the Courts to ensure that the trials do not suffer on account of the casual and callous attitude of the prosecution. In a case where witnesses are material and their presence can be ensured, the Court will permit a chance to the parties to lead the evidence. One of the major grievance of the petitioner is also that during the observations made in the various orders passed by the trial Court, there is no report or reasons regarding the service of summons on the official witnesses as the same was never received. It is the duty of the trial Court to ensure that a speedy trial be given to the accused as mandated by Article 21 of the Constitution. Keeping in mind the pendency of the case where more than eight opportunities were granted to the official witnesses for their appearance and the judgement rendered by the Hon'ble Supreme Court in "**Doongar Singh and others Vs. State of Rajasthan, 2018 (1) R.C.R.(Criminal) 256**" has already dealt with this issue and held as under:-

"5. In a criminal case of this nature, the trial court has to be mindful that for the protection of witness and also in the interest of justice the mandate of [Section 309](#) of the Cr.P.C. has to be complied with and evidence should be recorded on continuous

basis. If this is not done, there is every chance of witnesses succumbing to the pressure or threat of the accused.

6. This aspect of the matter has received the attention of this Court on number of occasions earlier. In [State of U.P. versus Shambhu Nath Singh and Others](#)¹ 2001(2) R.C.R (Criminal) 390 : (2001) 4 SCC 667 this Court observed it was a pity that the sessions court adjourned the matter for a long interval after commencement of evidence, contrary to the mandate of [Section 309](#) of the Cr.P.C. Once examination of witnesses begins, the same has to be continued from day-to-day unless evidence of the available witnesses is recorded, except when adjournment beyond the following day has to be granted for reasons recorded. This Court observed:

“12. Thus, the legal position is that once examination of witnesses started, the court has to continue the trial from day to day until all witnesses in attendance have been examined (except those whom the party has given up). The court has to record reasons for deviating from the said course. Even that is forbidden when witnesses are present in court, as the requirement then is that the court has to examine them. Only if there are “special reasons”, which reasons should find a place in the order for adjournment, that alone can confer jurisdiction on the court to adjourn the case without examination of witnesses who are present in court.

13. Now, we are distressed to note that it is almost a common practice and regular occurrence that trial courts flout the said command with impunity. Even when witnesses are present, cases are adjourned on far less serious reasons or even on flippant grounds. Adjournments are granted even in such situations on the mere asking for it. Quite often such adjournments are granted to suit the convenience of the advocate concerned. We make it clear that the legislature has frowned at granting adjournments on that ground. At any rate inconvenience of an advocate is not a “special reason” for bypassing the mandate of [Section 309](#) of the Code.

14. If any court finds that the day-to-day examination of witnesses mandated by the legislature cannot be complied with due to the non-cooperation of the accused or his counsel the court can adopt any of the measures indicated in the sub-section i.e. remanding the accused to custody or imposing cost on the party who wants such adjournments (the cost must be commensurate with the loss suffered by the witnesses, including the expenses to attend the court). Another option is, when the accused is absent and the witness is present to be examined, the court can cancel his bail, if he is on bail (unless an

application is made on his behalf seeking permission for his counsel to proceed to examine the witnesses present even in his absence provided the accused gives an undertaking in writing that he would not dispute his identity as the particular accused in the case).

15. The time-frame suggested by a three-Judge Bench of this Court in [Raj Deo Sharma v. State of Bihar](#), 1998 (4) RCR (Criminal) 396 : (1998) 7 SCC 507 is partly in consideration of the legislative mandate contained in [Section 309\(1\)](#) of the Code. This is what the Bench said on that score: (SCC p. 516, para 16)

“16.The [Code of Criminal Procedure](#) is comprehensive enough to enable the Magistrate to close the prosecution if the prosecution is unable to produce its witnesses in spite of repeated opportunities. [Section 309\(1\)](#) CrPC supports the above view as it enjoins expeditious holding of the proceedings and continuous examination of witnesses from day to day. The section also provides for recording reasons for adjourning the case beyond the following day.”

xxx xxx xxx

17. We believe, hopefully, that the High Courts would have issued the circular desired by the Apex Court as per [the said judgment](#). If the insistence made by Parliament through [Section 309](#) of the Code can be adhered to by the trial courts there is every chance of the parties cooperating with the courts for achieving the desired objects and it would relieve the agony which witnesses summoned are now suffering on account of their non-examination for days.

xxx xxx xxx

19. In some States a system is evolved for framing a schedule of consecutive working days for examination of witnesses in each sessions trial to be followed. Such schedule is fixed by the court well in advance after ascertaining the convenience of the counsel on both sides. Summons or process would then be handed over to the Public Prosecutor in charge of the case to cause them to be served on the witnesses. Once the schedule is so fixed and witnesses are summoned the trial invariably proceeds from day to day. This is one method of complying with the mandates of the law. It is for the presiding officer of each court to chalk out any other methods, if any, found better for complying with the legal provisions contained in [Section 309](#) of the Code. Of course, the High Court can monitor, supervise and give directions, on the administration side, regarding measures to conform to the legislative insistence contained in the above section.”

7. The above decision has been repeatedly followed. In *Mohd. Khalid versus State of W.B.* (2002) 7 SCC 334, this Court noted how adjournment can result in witnesses being won over. It was observed:

“54. Before parting with the case, we may point out that the Designated Court deferred the cross-examination of the witnesses for a long time. That is a feature which is being noticed in many cases. Unnecessary adjournments give a scope for a 3 (2002)7 SCC 334 grievance that the accused persons get a time to get over the witnesses. Whatever be the truth in this allegation, the fact remains that such adjournments lack the spirit of Section 309 of the Code. When a witness is available and his examination-in-chief is over, unless compelling reasons are there, the trial court should not adjourn the matter on the mere asking. These aspects were highlighted by this Court in *State of U.P. versus Shambhu Nath Singh*, 2001(2)RCR (Criminal) 390: (2001) 4 SCC 667 and *N.G. Dastane versus Shrikant S. Shivde*, 2001 (4) RCR (Criminal) 491: 2001 (4) S.C.T.723 : (2001) 6 SCC 135....”

8. Again in *Vinod Kumar versus State of Punjab*, 2015 (1) RCR (Criminal) 647 : 2015 (1) Recent Apex Judgments (R.A.J.) 689: (2015) 3 SCC 220 this Court noted how unwarranted adjournments during the trial jeopardise the administration of Justice. It was observed:

“3. The narration of the sad chronology shocks the judicial conscience and gravitates the mind to pose a question: Is it justified for any conscientious trial Judge to ignore the statutory command, not recognise “the felt necessities of time” and remain impervious to the cry of the collective asking for justice or give an indecent and uncalled for burial to the conception of trial, totally ostracising the concept that a civilised and orderly society thrives on the rule of law which includes “fair trial” for the accused as well as the prosecution?

4. In the aforesaid context, we may recapitulate a passage from *Gurnaib Singh v. State of Punjab*, 2013 (3) RCR (Criminal) 407 : 2013 (4) Recent Apex Judgments (R.A.J.) 111: (2013) 7 SCC 108

“26. ... we are compelled to proceed to reiterate the law and express our anguish pertaining to the manner in which the trial was conducted as it depicts a very disturbing scenario. As is demonstrable from the record, the trial was conducted in an extremely haphazard and piecemeal manner. Adjournments were granted on a mere

asking. The cross-examination of the witnesses were deferred without recording any special reason and dates were given after a long gap. The mandate of the law and the views expressed by this Court from time to time appears to have been totally kept at bay. The learned trial Judge, as is perceptible, seems to have ostracised from his memory that a criminal trial has its own gravity and sanctity. In this regard, we may refer with profit to the pronouncement in [Talab Haji Hussain v. Madhukar Purshottam Mondkar](#), AIR 1958 Supreme Court 376 wherein it has been stated that an accused person by his conduct cannot put a fair trial into jeopardy, for it is the primary and paramount duty of the criminal courts to ensure that the risk to fair trial is removed and trials are allowed to proceed smoothly without any interruption or obstruction.”

9. In spite of repeated directions of this Court, the situation appears to have remained unremedied.

10. We hope that the Presiding Officers of the trial courts conducting criminal trials will be mindful of not giving such adjournments after commencement of the evidence in serious criminal cases.

11. We are also of the view that it is necessary in the interest of justice that the eye-witnesses are examined by the prosecution at the earliest.

12. It is also necessary that the statements of eye-witnesses are got recorded during investigation itself under [Section 164](#) of the Cr.P.C. In view of amendment to [Section 164](#) Cr.P.C. by the Act No. 5 of 2009, such statement of witnesses should be got recorded by audio-video electronic means.

13. To conclude:

(i) The trial courts must carry out the mandate of [Section 309](#) of the Cr.P.C. as reiterated in judgments of this Court, inter alia, in [State of U.P. versus Shambhu Nath Singh and Others](#) 2001 (2) RCR (Criminal) 390: (2001) 4 SCC 667, [Mohd. Khalid versus State of W.B.](#) (2002) 7 SCC 334 and [Vinod Kumar versus State of Punjab](#), 2015 (1) RCR (Criminal) 647: 2015 (1) Recent Apex Judgments (R.A.J.) 689: (2015) 3 SCC 220.

(ii) The eye-witnesses must be examined by the prosecution as soon as possible.

(iii) Statements of eye-witnesses should invariably be recorded under [Section 164](#) of the Cr.P.C. as per procedure prescribed thereunder.”

In view of the above, the trial Court is directed to take the following steps for expediting the conclusion of trial:-

- i) The trial Court shall frame a schedule of dates in advance for summoning the witnesses and shall also endeavour to record the statements of the prosecution witnesses whose presence is duly secured.
- ii) Prosecution is directed to ensure the presence of all the prosecution witnesses before the trial Court on the dates as may be fixed by the trial Court for recording the prosecution evidence. The District Attorney concerned to take necessary steps for the purpose of securing the presence of the remaining prosecution witnesses.

Consequently, petition stands disposed of accordingly.

(DEEPAK MANCHANDA)
JUDGE

05.05.2023
seema/vanita

Whether speaking/reasoned :	Yes	No
Whether Reportable :	Yes	No