

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

203

CRM-M-41817-2015

Date of Decision: 01.03.2023

Raj Kumar

.... Petitioner

Versus

State of Haryana and others

.... Respondents

CORAM: HON'BLE MR. JUSTICE ASHOK KUMAR VERMA

Present: - Mr. Ajay Jain, Advocate for the petitioner.

Mr. Gaurav Bansal, Assistant Advocate General, Haryana.

Ms. Kusum Raj, Advocate for respondents No. 2 to 4.

ASHOK KUMAR VERMA, J. (ORAL)

1. Prayer in this instant petition filed under Section 482 Cr.P.C. is for setting aside the order dated 09.10.2015 (Annexure P-1) passed by the Judicial Magistrate Ist Class, Hisar vide which the evidence of prosecution was closed by order and also order dated 17.11.2015 (Annexure P-4) whereby the application under Section 311 Cr.P.C. filed by the petitioner through prosecution seeking permission to examine Ramsudeen, the then Estate Officer, Haryana Wakf Board, Hisar, was dismissed.

2. The brief facts of the case as emanating from the pleadings are that on the statement of petitioner, FIR No. 988 dated 31.10.2011, under Sections 420, 323, 506 read with Section 34 IPC, Police Station Hisar City, Hisar was registered against respondents No. 2 to 4 on the

allegations that the petitioner along with his brother-Sadanand (respondent No. 2 herein) was running a shop at Parijat Chowk, Railway Road, Hisar, which had been allotted long back and the same is in the possession of both the brothers. Both the brothers are running the shop under name and style of Valecha Hotel. Respondent No. 2-Sadanand in connivance with his sons, namely, Anil Kumar and Gulshan (respondents No.3 and 4 herein) fraudulently and illegally on the basis of a wrong affidavit got the shop transferred in their favour and tried to forcibly dispossess the petitioner. They also beat the petitioner and threatened him with dire consequences. After completion of investigation and framing of charge the case was fixed for prosecution evidence. However, vide order dated 09.10.2015 (Annexure P-1) the evidence of the prosecution was closed by order. Subsequently, the petitioner-complainant moved an application under Section 311 Cr.P.C. through prosecution for summoning Ramsudden, the then Estate Officer, Haryana Wakf Board or the concerned Clerk of the above said department along with complete record in respect of Valecha Bhojanalya, Shop No. 17, Plot No. 17A, Railway Road Hisar along with affidavits given by respondents No. 2 to 4. The aforesaid application under Section 311 Cr.P.C. was dismissed by the trial Court vide order dated 17.11.2015 (Annexure P-4). Hence, the present petition.

3. Learned counsel *inter alia* contends that the impugned order Annexure P-3 is erroneous in view of the fact that name of witness Ramsudeen, the then Estate Officer, Harayana Wakf Board, Hisar, was

mentioned in the list of witnesses. The said witness was very much necessary and essential for the just and proper adjudication of the case. In the interest of justice, the prosecution may be afforded one effective opportunity to conclude its entire evidence, at own responsibility. In support of his contentions, learned counsel for the petitioner has placed reliance upon judgments of this Court in ***Virender vs. Ramesh Rani and another, 2016(1) PLR 592*** and ***Balbir Singh vs. Sher Singh @ Shri Chand, 2015(47) RCR (Civil) 729***.

4. On the other hand, learned counsel for respondents No. 2 to 4 submits that she has no objection in case the present petition is allowed and one opportunity may be granted to the prosecution to conclude its entire evidence. She further submits that the next date before the trial Court is 06.03.2023.

5. This Court has given anxious consideration to the submissions made by learned counsel for the parties and is of the considered opinion that the prosecution should be granted one opportunity to conclude its entire evidence, at own responsibility.

6. Therefore, in the interest of justice, equity and good conscience, without commenting upon the merits of the case, the instant petition is allowed. The impugned orders dated 09.10.2015 and 17.11.2015 (Annexures P-1 and P-4, respectively) are hereby set aside. The trial Court is directed to afford one opportunity to the prosecution to conclude its entire evidence, at own responsibility. The parties are directed to appear before the trial Court on 27.03.2023, on which date the

trial Court shall fix the date for examination of Ramsudeen, the then Estate Officer, Haryana Wakf Board, Hisar.

7. The prosecution through learned State counsel is directed to ensure the presence of Ramsudeen, aforesaid for recording his statement on the date fixed by the trial Court.

01.03.2023	(ASHOK KUMAR VERMA)
<i>rishu</i>	JUDGE
Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No