IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

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2023:PHHC:137510
CRR No.2359 of 2023
Date of decision: October 16th, 2023

Surjeet Kaur and another

.....Petitioners

Versus

State of Punjab

.....Respondent

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present: Ms. Savita Rani, Advocate
for the petitioners.

MANJARI NEHRU KAUL, J.

Petitioners are impugning the order dated 25.08.2023 passed by learned Judicial Magistrate 1st Class, Patiala, whereby evidence of the prosecution has been closed by the learned trial Court.

2. Learned counsel for the petitioner submits that an FIR No.29 dated 20.02.2017 (Annexure P-1) had been lodged by petitioner No.2 against the accused on the allegations that they had been creating nuisance and had destroyed the front wall as well as the main gate of his house.

3. Learned counsel has submitted that though the petitioners always kept track of the trial which was pending in the above-mentioned FIR, however, being senior citizens, a lot of age- related issues came in their way, as a result of which, they lost track of their case. It was thus, the duty of the prosecution to ensure that they were given proper notice to appear during trial and furthermore, that service of summons was duly effected on the petitioners.

4. Instead summons were never served upon the petitioners and false service reports had been prepared by the prosecution just to benefit the accused because there appeared to be an unholy nexus

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between the prosecution and the accused persons. Learned counsel submits that the complainant-petitioner thus, cannot be punished for lapses on the part of the prosecution and in case the evidence of the petitioners is closed, they would be subjected to grave injustice. A prayer has been made for one more opportunity to the petitioners to lead their evidence before the Court below.

5. I have heard learned counsel for the petitioners and perused the material placed on record.

6. A perusal of the zimni orders of the trial Court reveals that petitioner No.2 i.e. PW-1 Manmohan Singh and petitioner No.1 i.e. PW-6 Surjit Kaur were granted several opportunities to appear and give their evidence. Vide order dated 01.02.2021, notice was issued to the petitioners. Order dated 08.03.2021 reflects that PW-1 i.e. petitioner No.2 could not be examined at his own request. Furthermore, an application for personal exemption of PW-6 i.e. petitioner No.1 was moved and allowed by the trial Court. Vide order dated 01.04.2021, both the petitioners were summoned again as they had yet again not come present. Thereafter, bailable warrants were issued for their appearance and subsequently, vide order dated 07.06.2023, non-bailable warrants were issued against them. Vide order dated 25.08.2023, the trial Court observed that despite service of non-bailable warrants, the petitioners had not come present to record their evidence. Though the learned counsel has argued that the petitioners were never served, however, petitioners have failed to bring any material on record to dispute the service of summons, bailable warrants and non-bailable warrants upon them. Learned counsel has also miserably failed to satisfy this Court as to why the Process Servers and other officials

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concerned would have prepared false reports qua service of summons bailable warrants and non-bailable warrants.

7. Still further, it has been reflected in the impugned order that prosecution evidence has been pending for the last four years though learned counsel has cited age-related issues for their non-appearance, however, they have failed to point out any condition, medical or otherwise, which prevented them from stepping into the witness box.

8. Trite to say that it is expected of the complainant that he/she must remain vigilant during trial and not unnecessarily delay it. The accused too has a right to speedy trial and he cannot be kept with the sword hanging over his head, more so when the petitioners themselves have stated in their petition that they could not keep a track of the trial Court proceedings.

9. In the facts and circumstances as enumerated hereinabove, the instant petition stands dismissed.

10. However, it is made clear that anything observed hereinabove shall not be construed to be an expression of opinion on the merits of the case.

October 16th, 2023 (**MANJARI NEHRU KAUL**)
Puneet **JUDGE**

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No

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