

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

CRM-M-837-2019 (O&M)
Date of Decision:04.08.2023

Jashan Kaur Parmar

...Petitioner

Vs.

State of Punjab

...Respondent

Coram : Hon'ble Mr. Justice N.S.Shekhawat

Present: Mr. Sachin Jain, Advocate
 for the petitioner.

Mr.M.S Bajwa, DAG, Punjab.

Mr. Vijay Lath, Advocate
for the applicant/accused.

N.S.Shekhawat J.

CRM-29601-2022

1. Prayer in the present application is for placing on record the copies of Aadhar Card, Passport and Death Certificate as Annexures R-2/A to R-2/C and further exempted from filing certified copies of the same.

2. For the reasons mentioned in the application, the same is allowed, subject to all just exceptions. Annexures R-2/A to R-2/C are taken on record.

CRM-29602-2022

1. The present application has been moved by the applicant to implead the accused namely, Jagjit Singh Mann as respondent No.2.

2. Notice of the application to the non-applicant/petitioner.

3. Mr. Sachin Jain, Advocate, accepts notice on behalf of the non-applicant-petitioner and he has no objection in case, Jagjit Singh Mann, be impleaded as respondent No.2.

4. For the reasons mentioned in the application, the same is allowed and the accused namely Jagjit Singh Mann is ordered to be impleaded as respondent No.2 in the memo of parties. The amended memo of parties is taken on record.

CRM-29603-2022

1. Learned counsel for the applicant does not want to press the present application.

2. Dismissed as not pressed.

Main case:

1. The petitioner has filed the present petition under Section 482 Cr.P.C with a prayer to quash the order dated 25.09.2018 (Annexure P-2) passed by the Court of Additional Chief Judicial Magistrate, SBS Nagar, Mohali, whereby the evidence of the prosecution was ordered to be closed by the Court order.

2. In the present petition, the petitioner has also challenged the order dated 28.09.2018 (Annexure P-4), passed by the Trial Court, whereby the application under Section 311 Cr.PC was ordered to be dismissed.

3. As per the story of the prosecution, Sardar Mohinder Singh, husband of the petitioner had lodged one FIR No.7 dated 25.04.2014, under Sections 420,447,34 of IPC, Police Station NRI, SBS Nagar against Harjit Singh Parmar and Jagjit Singh Mann. The husband of the petitioner died on 02.04.2016 and thereafter, the petitioner was pursuing the proceedings before the Trial Court. The challan was presented against the accused and the trial formally commenced. During the trial proceedings, the case was listed on 25.09.2018 for prosecution evidence. As per the record, one of the remaining

witness were summoned through the office of SSP and the summons were issued to some other witnesses. However, the process issued for summoning of witnesses through the office of SSP as well as the summons issued for summoning of other witnesses had been received unexecuted. On this, the Trial Court passed the following impugned order:-

“Statement of PW5 Wazir Kaur recorded. Despite grant of last opportunity for conclusion of prosecution evidence on second occasion and issuance of the process for summoning of remaining witnesses through the office of SSP and summons issued for summoning of other witnesses received back unexecuted. Hence, keeping in view of the nature of the offences alleged to be committed by the accused the period of which he has already faced trial before the Court. Remaining prosecution evidence is closed by order. Case stands adjourned to 28.09.2018 for recording the statement of accused under Section 313 Cr.P.C.

4. After passing of the abovesaid order, the petitioner/complainant also filed an application under Section 311 Cr.PC to examine Joginder Pal, Ex Sarpanch from Village Kamam as a witness on the ground that the said witness was earlier ill and was not able to depose properly, even though he had appeared before the Court. Consequently, he was given up on 24.08.2016. As per the complainant, the said witness could not be examined due to ill health and now he wanted to appear. However, vide the order Annexure P-4 the said application was also declined by the Trial Court by observing that the said witness himself did not intend to suffer any statement in the present case and consequently, the Trial Court did not find it justified to compel him to appear before the Court as a witness.

5. By way of the instant petition, the petitioner has also challenged

the order Annexure P-2, whereby the evidence of the prosecution was closed by the Court order as well as the order Annexures P-4, whereby the application under Section 311 Cr.PC had been dismissed by the Trial Court.

6. Learned counsel for the petitioner submits that from the impugned order Annexure P-2, it is evident that the summons for the remaining witnesses were issued through the office of SSP and in routine also, summons were issued for some of the witnesses, however, the same were received back unexecuted. In such circumstances, the Trial Court should have issued coercive process for ensuring the presence of the said witnesses before the Trial Court as the witnesses were not intentionally appearing before the Trial Court. Apart from that, the testimony of Joginder Pal, Ex Sarpanch, Village Kamam was also necessary for the just disposal of the matter and he should have also been examined by the Trial Court. At this stage, learned counsel for the petitioner also submits that the prosecution/complainant shall examine all the material witnesses at their own risk before the Trial Court and two effective opportunities may be granted to them to examine all the witnesses on their behalf.

7. On the other hand learned State counsel as well as learned counsel appearing on behalf of respondent No.2 have vehemently opposed the prayer on the ground that the petitioner was already granted sufficient opportunity by the Trial Court and no other opportunity should be granted to lead evidence. Learned counsel further submitted that the petitioner is making all efforts to delay the proceedings before the Trial Court and the petition is liable to be dismissed by this Court.

8. I have heard learned counsel for the parties and with their able

assistance; I have perused the record carefully.

9. From the impugned order Annexure P-2, it is apparent that the summons issued for the service of remaining witnesses through the SSP office and the summons issued for summoning of other witnesses had been received back unexecuted. In fact, the witnesses were not intentionally appearing before the Trial Court. Even the summons were sent through the office of SSP, still the witnesses were evading their service. In such circumstances, the Trial Court was bound to follow the procedure prescribed under Sections 87 to 89 of Cr.PC, which have been reproduced below:-

87. Issue of warrant in lieu of, or in addition to, summons- A

court may, in any any case in which it is empowered by this Code to issue a summons for the appearance of any person, issue, after recording its reasons in writing, a warrant for his arrest-

(a) if, either before the issue of such summons, or after the issue of the same but before the time fixed for his appearance, the Court sees reason to believe that he has absconded or will not obey the summons or:-

(b) If at such time he fails to appear and the summons is proved to have been duly served in time to admit of his appearing in accordance therewith and no reasonable excuse is offered for such failure.

88. Power to take bond for appearance:- when any person for whose appearance or arrest the officer presiding in any court is empowered to issue a summons or warrant, is present in such Court such officer may require such person to execute a bond, with

or without sureties, for his appearance in such Court, or any other Court to which the case may be transferred for trial.

89.Arrest on breach of bond for appearance:- When any person who is bound by any bond taken under this Code to appear before a Court, does not appear, the officer presiding in such Court may issue a warrant directing that such person be arrested and produced before him.

10. From the perusal of these provisions, it is apparent that the Court can always issue warrants in lieu of, or in addition to, summons after recording its reasons, for the service of summons. In the present case also, it is apparent that the witnesses had not appeared intentionally and instead of closing the prosecution evidence by order, the Trial Court should have issued warrants/coercive process to ensure the process of said witnesses before this Court.

11. This Court has held in the matter of **“Bachittar Singh Vs. State of Punjab,2002(1) RCR Criminal 381 as follows:-**

6. At the first instance, the Magistrate is to issue summon and after service is effected and the Magistrate comes to the conclusion that the witness has intentionally evaded to appear in the Court then the Magistrate can resort the coercive method and has a power to issue warrants of arrest to enforce the attendance of the witness. Under Section 88 Cr.PC when any person for whose appearance or arrest the officer presiding in any Court is empowered to issue summons or warrant, is present in such Court, such officer may require such person to execute a bond, with or without sureties and despite that the witness is not appearing in the court, the Court has the power to issue warrants of arrest under Section 89 Cr.PC. Once the witness has appeared, a summary trial

for disobedience can be held under Section 350 Cr. PC.

7. The learned Magistrate in this case has not followed the procedure as has been laid down in the Code of Criminal Procedure. The learned Magistrate instead of adopting coercive method, adopted short circuit method and closed the evidence by order.

12. Apart from that, it is apparent that even the impugned order Annexure P-4 is wrongly passed by ignoring the provisions of Section 311 Cr.P.C. On 24.08.2016, Joginder Pal, Ex Sarpanch from Village Kamam had appeared as a witness. However, his statement as a witness could not be recorded as he was not well and was not able to appear as a witness. Even on 24.08.2016, Joginder Pal, Ex.Sarpanch suffered a statement, whereby he had stated that he was a heart patient and was not able to depose properly. However, the application under Section 311 Cr.P.C moved by the prosecution was dismissed on the ground that the witness himself did not intend to suffer any statement in the present case and the Trial Court did not find justified to compel him to appear before the Trial Court. In fact, the said observations, is also wrong and legally unsustainable. It was clear from the record that on 24.08.2016, even though the witness was present, but due to his ill health, he could not be examined on the said day and the Trial Court was under a legal obligation to bound down the said witness for his appearance on the next date of hearing. Even the trial Court completely overlooked the provisions of Section 311 Cr.PC in this regard.

13. In view of the above discussion, the impugned orders Annexures P-2 and P-4 are set aside and the prosecution/petitioner is granted two effective opportunities to conclude the entire evidence at their own risk and

responsibility.

14. Still further, it is apparent from the record that the petitioner as well as newly added respondent No.2 are senior citizens and the FIR in the present case was registered on 25.04.2014. Consequently, the Trial Court is directed to conclude the trial proceedings as early as possible, preferably within a period of eight months from today.

15. Disposed of.

04.08.2023
hitesh

(N.S.SHEKHAWAT)
JUDGE

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