

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

280

CRM-M-56480-2023 (O&M)

Date of decision: 21.11.2023

Gurmit Kaur**...Petitioner****Versus****State of Punjab and others****...Respondents****CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA**

Present:- Mr. Ravi Malhotra, Advocate
for the petitioner.

Mr. Kunwarbir Singh, AAG, Punjab.

MANISHA BATRA, J. (Oral)

1. The present petition has been filed under Section 482 Cr.P.C. seeking quashing of order dated 20.10.2023 (Annexure P-4), passed by the Court of learned Judicial Magistrate First Class, Ludhiana in case bearing FIR No. 71 dated 24.09.2016, registered under Sections 323, 294, 354, 341, 506 and 149 of the Indian Penal Code, 1860 (*for short 'IPC'*) at Police Station Jodhan, District Ludhiana, whereby the learned Magistrate had closed the evidence of the prosecution by order of the Court.

2. Brief facts of the case relevant for the purpose of disposal of this petition are that the private respondents, i.e. respondent Nos. 4 to 8, are facing trial in the aforementioned case for commission of offences punishable under Sections 323, 294, 354, 341, 506 and 149 of the IPC. They have been chargesheeted on 14.12.2018 and the prosecution evidence is being recorded. The statement of the petitioner, who is the complainant in the aforementioned case, as well as that of her father-in-law had been

recorded by the learned trial Court. The statements of Investigating Officer and some other police officials still remain to be recorded. However, vide impugned order dated 20.10.2023, the learned trial Court has closed the evidence of the prosecution by order of the Court on account of failure of the prosecution to conclude the same.

3. It is submitted that due to non-examination of the other witnesses, especially the Investigating Officer, the case of the petitioner-complainant is likely to be prejudiced very seriously as due to his non-examination, there would be a possibility of acquittal of the private respondents-accused. Therefore, the prayer has been made by the petitioner for setting setting the impugned order and giving direction to the official respondent Nos. 2 and 3 to ensure the production of the Investigating Officer and other official witnesses before the trial Court for getting their statements recorded.

4. Learned State counsel has submitted that learned trial Court has rightly closed the prosecution evidence.

5. I have heard learned counsel for the petitioner as well as learned State counsel and have also perused the record.

6. A perusal of the documents placed on record reveals that the petitioner and her father-in-law have been examined by the learned trial Court as PW-1 and PW-2, respectively. On 20.10.2023, learned trial Court observed that two witnesses, namely Jaspal Singh, ASI and HC Ram Rattan had not turned up despite the fact that their presence was sought by issuance of non-bailable warrants and also by way of attachment of their salaries and further despite the fact that about 34 opportunities had been availed by

the prosecution over a period of more than 06 years for the said purpose.

7. It is apparent from the impugned order (*Annexure P-4*), as passed by the learned trial Court, that several effective opportunities had been granted to the prosecution to conclude its evidence and even coercive action, in the form of attachment of salaries of aforesaid two witnesses and by way of issuance of non-bailable warrants, was taken against the them. On account of non-examination of the Investigating Officer, certainly a prejudice may be caused to the case of the prosecution. The non-appearance of the Investigating Officer in the Court, despite passing of order of attachment of his salary and despite issuance of non-bailable warrants, clearly appears to be a lapse on the part of respondents No. 2 and 3, i.e. Commissioner of Police, Ludhiana and SHO, Police Station Jodhan, whose duties were to ensure the presence of the police witnesses including PW-1 and PW-2 before the Court. In such circumstances, in my considered opinion, the impugned order, closing the evidence of the prosecution, certainly requires to be interfered with.

08. Accordingly, while allowing the present petition, the impugned order dated 20.10.2023 (*Annexure P-4*) is hereby set aside with a direction to the trial Court to issue non-bailable warrants to remaining unexamined official witnesses including Investigating Officer of the case, who obviously is a material witness of the prosecution and send the same to the Office of respondent No. 2 for ensuring the presence of the above said witness in the Court on the date(s) to be fixed by the learned trial Court. Respondent Nos. 2 and 3 shall not seek more than two opportunities for complying with the order of this Court for ensuring the presence of the Investigating Officer.

9. Learned State counsel is directed to inform respondent Nos. 2 and 3 about this order.

21.11.2023
Waseem Ansari

(MANISHA BATRA)
JUDGE

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether reportable</i>	<i>Yes/No</i>