

125 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-8377-2024 (O&M)
Date of Decision: 16.02.2024

POOJA YADAV

.....PETITIONER

Vs.

STATE OF HARYANA AND ANOTHER

.....RESPONDENT

CORAM: HON'BLE MS. JUSTICE HARPREET KAUR JEEWAN

Present: Mr. Anshul Mangla , Advocate,
for the petitioner.

Mr. Amrik Singh Narwal, D.A.G. Haryana.

HARPREET KAUR JEEWAN J.

1. Prayer in the present petition filed under Section 482 of the Code of Criminal Procedure, 1973 (for short 'the Code') is for setting aside the impugned order dated 03.10.2023 (Annexure P-1), passed by learned Judicial Magistrate Ist Class, Jagadhri, whereby the evidence of the prosecution was closed.

2. Counsel for the petitioner *inter alia* contends that the FIR was registered at the instance of the petitioner. However, the parents of respondent No. 2 were declared innocent during the investigation and the '*challan*' was filed only against respondent No. 2. After framing the charges, the prosecution evidence was examined and thereafter, the application under Section 319 of the Code was dismissed for summoning the parents of respondent No. 2 as additional accused.

3. It was further contended that when the case was at the stage of defence evidence, on three occasions, i.e. 27.01.2023, 07.02.2003 and 16.02.2023, no evidence was led in defence. The petitioner was permitted to

summon the record pertaining to the case file under Section 125 of the Code and the Protection of Women from Domestic Violence Act, 2005 (for short 'the Act of 2005), and she was also permitted to summon the witness on an application moved by her under Section 311 Cr.P.C., vide order dated 31.03.2023 (Annexure P-6).

4. Counsel for the petitioner further contended that on 24.04.2023, respondent No. 2 filed an application for personal exemption which was allowed by the learned trial Court. Furthermore, the summons issued to the prosecution witnesses, i.e. DRK, Sessions Court, Jagadhri, concerned Doctor at Civil Hospital, Rewari and Devi Chand, Notary Public, were received back served but they did not appear, which is evident from the '*zimini*' order dated 24.04.2023 (Annexure P-7). On 16.05.2023, only one witness, i.e. Vinod Kumar, concerned DRK, Sessions Court, Jagadhri (PW-8) was examined and bailable warrants of other two witnesses were also received back with the report that they are on medical rest which is evidence from the order dated 16.05.2023 (Annexure P-8). The bailable warrants of the aforesaid witnesses were also not received back served on 05.06.2023 (Annexure P-9). As per order dated 12.07.2023 (Annexure P-10), there was a call of suspension of work by the Bar Association. Further, the said witnesses did not appear, as per the orders of the trial Court dated 28.07.2023 (Annexure P-11), 21.08.2023 (Annexure P12) and 13.09.2023 (Annexure P-13).

5. Counsel for the petitioner contends that inspite of procuring the service of the said witnesses through non-bailable warrants, the trial Court passed the impugned order dated 03.10.2023 (Annexure P-1) and closed the prosecution evidence. The application of review of the order dated 03.10.2023 (Annexure P-1) was also dismissed on 16.02.2023 [Annexure

P-15 (colly)], as such the valuable rights of the petitioner to examine the said witnesses have been infringed. The trial Court did not consider the fact that the said witnesses are essential for just and fair adjudication. The trial Court also not considered while passing the impugned order that non-appearance of the prosecution witnesses was not attributed to the petitioner. The witnesses who were served but not appeared, their presence could have been procured through the non-bailable warrants of arrest.

6. Having received advance copy of the petition, Mr. Amrik Singh Narwal, D.A.G. Haryana, contends on behalf of respondent-State that the trial Court has rightly passed the order dated 03.10.2023 after granting numerous opportunities to the petitioner.

7. Keeping in view the facts and circumstances of the case, issuance of notice to the private respondent No. 2 is dispensed with.

8. I have considered the aforesaid contentions and gone through the paper-book carefully.

9. The FIR was registered on 26.02.2016. The final report was presented before the trial Court on 21.07.2016 and the charges were framed on 12.08.2016. It is an admitted fact that the prosecution evidence commenced on 26.10.2016 and concluded on 11.01.2023. Throughout this period, when the prosecution evidence was being led for a period of almost 7½ years, the petitioner did not file any application for summoning any additional witnesses. However, after concluding the prosecution evidence, recording the statement of the accused under Section 313 of the Code and even when three opportunities were already granted for defence evidence, the petitioner moved an application for summoning additional witnesses with the aid of Section 311 of the Code to prove the records

pertaining to the litigation under Section 125 of the Code and the Act of 2005. The said litigation was within the knowledge of the petitioner throughout this period when the prosecution evidence was being led. Despite that by taking a lenient view, the trial Court allowed the application under Section 311 of the Code by specifically mentioning that only two opportunities would be granted for the purpose of summoning the prosecution witnesses and this fact is recorded in the trial Court's '*zimini*' order dated 31.03.2023.

10. Despite two opportunities were granted to lead additional evidence, the trial Court had actually awarded many opportunities to the prosecution for summoning additional witnesses, as per the '*zimini*' order dated 16.05.2023 (Annexure P-8). The correct particulars of concerned Doctor Civil Hospital, Rewari, were ordered to be filed for issuance of summons to the doctor and the last opportunity was granted and the matter was adjourned for 05.06.2023. As per the trial Court's order dated 05.06.2023 (Annexure P-9), theailable warrants of the aforesaid concerned doctor could not be issued for want of correct address. Similarly, as per the order dated 28.07.2023 (Annexure P-11), the said warrants could not be issued again for want of correct address of the concerned doctor. As per the order dated 13.09.2023 (Annexure P-13), summons issued to the doctor were received back with the report that name of the concerned doctor (who conducted X-ray) be mentioned in the summons. It is on that date that that a request was made by the petitioner that the original case file of the petition under Section 125 of the Code be summoned from the record room. The summons were again ordered to be issued for 03.10.2023. However, on that date, no PWs was present, as such, the prosecution evidence was closed and

the Magistrate proceeded further for recording the statement of the accused under Section 313 of the Code.

11. The aforesaid circumstances clearly indicate that the documents which were sought to be summoned were within the knowledge of the petitioner but the application for summoning the said documents was filed at a belated stage when the case was fixed at defence evidence. Thereafter, the complete/correct address was not furnished, as such, the medical evidence could not be summoned. Endless adjournments cannot be granted in such cases where the documents are within the knowledge of a party who is seeking aid of the Court for summoning such documents.

12. Keeping in view the aforesaid circumstances, no ground is made out for exercising jurisdiction under Section 482 of the Code which is discretionary in nature.

13. Consequently, the present petition stands dismissed.

14. Pending miscellaneous application (s), if any, shall also stand disposed of.

February 16, 2024
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(HARPREET KAUR JEEWAN)
JUDGE

Whether Speaking	Yes
Whether reportable	No