

**IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH**

(299)

**2024:PHHC:050316
CRM-M-16495-2024
Date of Decision: 15.04.2024**

Darshan Singh

--Petitioner

Versus

State of Punjab & another

--Respondents

CORAM:- HON'BLE MR. JUSTICE GURVINDER SINGH GILL.

Present:- Mr. Ishan Gupta, Advocate for the petitioner.

Mr. Gauravdeep Singh Dhaliwal, AAG, Punjab.

Mr. Yagsimant Attri, Advocate for respondent no.2.

GURVINDER SINGH GILL.J (Oral)

1. In the present petition petitioner/complainant assails the order dated 21.03.2024 (Annexure P-1) passed by learned SDJM, Sunam in case no.CHI/269/2017 vide which the learned Trial Court has closed the prosecution evidence by order.

2. The matter arises out of FIR No.38 dated 21.04.2016 registered under Sections 279, 337, 427, 304-A IPC at Police Station City Sunam pertaining to death of petitioner's brother and injuries to petitioner's nephew. While the FIR was lodged in the year 2016, the prosecution could not complete its evidence. Injured Sukhwinder Singh i.e. nephew of the petitioner had gone abroad and as such his statement could not be recorded. However, upon an application moved by the complainant, permission was granted to get the statement of aforesaid Sukhwinder Singh recorded by means of video conferencing. As many as five opportunities were afforded to get the statement of Sukhwinder Singh recorded through video conferencing but somehow the same could not be recorded. On 15.02.2024 which was the fifth opportunity for recording statement of Sukhwinder

Singh through video conferencing, counsel representing the complainant stated that aforesaid Sukhwinder Singh will be shortly coming down to India in the next month and requested for adjournment. Such request was accepted and the complainant was directed to complete his evidence on the next date of hearing i.e. by 21.03.2024. However, even on the said date the aforesaid Sukhwinder Singh was not present and another request for adjournment was made which was not accepted and consequently the Trial Court while observing that as many as five opportunities have been granted, closed the evidence.

3. Learned counsel for the petitioner submitted that although directions had been issued for recording the statement of injured Sukhwinder Singh through video conferencing but the requisite formalities were not completed by the prosecution inasmuch as the information was not sent to remote point so as to facilitate identification of the witness i.e. injured Sukhwinder Singh in U.K., which was a pre-requisite for recording statement of any witness. Learned counsel submitted that under these circumstances, the complainant cannot be made to suffer on account of any inaction on part of the prosecution.

4. Opposing the petition, learned counsel representing respondent no.2/accused has vehemently argued that since more than ample opportunities have already been afforded to the prosecution, no case for grant of further opportunity is made out. Counsel submits that it was for the complainant to have taken necessary steps so that requisite formalities are completed which he failed to do.

5. Learned State counsel has, however, not seriously opposed the petition inasmuch as it is a case where one more prosecution witness is

sought to be examined. The person, who is sought to be examined i.e. injured Sukhwinder Singh is a material witness inasmuch as he is not only an eye witness but had also sustained injuries in the accident in question. The main reason attributed for his non-examination is lack of communication inasmuch as the prosecution is stated to have not sent requisite information to the remote point in U.K on account of which statement of injured Sukhwinder Singh could not be recorded.

6. At the same time, this Court also finds that even the complainant or the injured witness have not acted diligently inasmuch as despite having stated before the Trial Court that the witness would be coming down to India and accepting the request of the complainant the matter had been adjourned to 21.03.2024 to enable the complainant to get the statement of injured Sukhwinder Singh recorded, the same was not done as the witness did not appear.

7. Having regard to the facts and circumstances of the case particularly the fact that the injured witness namely Sukhwinder Singh is stated to be in India and in fact is present in Court and has been identified by the counsel, the instant petition is allowed and the petitioner is permitted to examine the injured Sukhwinder Singh. The impugned order dated 21.03.2024 (Annexure P-1), as such is set aside. The Trial Court shall afford one effective opportunity to the petitioner within 10 days from today so as to enable the petitioner to examine Sukhwinder Singh. Needless to mention that respondent no.2 shall be afforded requisite opportunity to cross-examine the aforesaid witness as well as to confront him with his previous statement, if any. The matter shall not be adjourned unless there are compelling circumstances for doing so since the witness is stated to fly

back to U.K after about three weeks. However, the aforesaid order shall be subject to payment of Rs.1,00,000/- as cost which shall be deposited with the Secretary, DLSA, Sangrur.

8. Petition is disposed of in the above terms.

(GURVINDER SINGH GILL)
JUDGE

15.04.2024
lucky

Whether speaking/reasoned:	Yes/No
Whether Reportable:	Yes/No