



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

201

CRM-M-15027-2018 (O&M)

Date of Decision:- 04.04.2025

SANDEEP BANSAL

....Petitioner(s)

Versus

STATE OF PUNJAB AND OTHERS

...Respondent(s)

CORAM: HON'BLE MR. JUSTICE SANJIV BERRY

Present : Mr. Peeyush Gagneja, Advocate for the petitioner.

Mr. Rajinder Singh Bhatta, DAG Punjab.

Mr. Munish Jolly, Advocate for respondent No.3.

SANJIV BERRY, J. (ORAL)

The present petition has been preferred under Section 482 Cr.P.C for quashing of the impugned orders dated 28.03.2018 (Annexue P-2) and 07.04.2018 (Annexure P-5), passed by learned Judicial Magistrate First Class, Dera Bassi, District SAS Nagar in case FIR No.153 dated 24.08.2013 registered under Sections 419, 420, 467, 471, 474, 120-B IPC at Police Station Lalru, District SAS Nagar, whereby the prosecution evidence has been closed by order.

2. In *nut shell* the facts relevant for adjudication of case are that the petitioner is a victim of the offence committed by respondent Nos.2 to 5, who have committed fraud with the petitioner and cheated him to the extent of an amount of ₹25 lakhs by executing an agreement to sell for the land



measuring 16 Bigha, 01 Biswa in Village Jastna Khurd, District SAS Nagar. After the registration of the FIR, challan was presented in the Court and charges were framed against the accused/private respondents. The trial of the case was pending from 20.05.2017 and after the appearance of accused Kirpal Singh, the case was fixed for prosecution evidence on different dates and on 28.03.2018, the learned trial Court closed the prosecution evidence by order (Annexure P-2). Thereafter, the case was fixed for recording the statement of the accused under Section 313 Cr.P.C and on that date, the petitioner filed an application under Section 311 Cr.P.C with a prayer to grant permission to the prosecution for examining the material witnesses and the same was allowed vide order dated 02.04.2018 (Annexure P-4) one last opportunity was granted to examine the material prosecution witnesses. However, on 07.04.2018 the trial Court closed the evidence of the prosecution, by order, on account of non-appearance of the witnesses (Annexure P-5). Hence, the present petition.

3. Learned counsel for the petitioner as well as learned State counsel contend that the impugned order dated 07.04.2018 (Annexure P-5) passed by the learned trial Court is illegal, arbitrary and deserves to be quashed on the ground that on 07.04.2018 there was a resolution passed by the Bar Association Dera Bassi observing “No Work Day”, as such the counsel for the petitioner was unable to appear before the trial Court, resultantly, impugned order was passed whereby evidence of prosecution was closed by order without any justification or explanation. They submit that by passing of the impugned order in an illegal manner, the petitioner would suffer irreparable loss as the material witnesses of the prosecution have been left to be examined for no fault of the complainant.



4. Per contra learned counsel for the respondent No.3 contends that the impugned order is justifiable as the prosecution despite taking numerous opportunities to conclude the evidence and the accused could not have been allowed to suffer for years due to no examination of prosecution witnesses by the prosecution and therefore, the learned trial Court left with no other option except to pass the impugned order which does not suffer from any infirmity, hence prayed for dismissal of the present petition.

5. After considering the rival contentions and perusing the record it is observed that the matter in *nut shell* in the present case is the passing of the impugned orders dated 28.03.2018 and 07.04.2018 by the learned Magistrate closing the evidence of the prosecution by order.

6. The perusal of record further reveals that vide order dated 22.03.2018, 2 prosecution witnesses were examined by the prosecution while Inspector Gurdial Singh, prosecution witness could not come and on the request of Additional Public Prosecutor, the case adjourned to 23.03.2018. On 23.03.2018 an exemption application was moved by the accused Sukhjinder Singh which was allowed. Prosecution witness Gurdial Singh, Investigating Officer has also appeared and his statement was recorded and he was bound down for 26.03.2018 by affording last opportunity. On 26.03.2018 although this witness appeared in Court but was not examined as the Presiding Officer was on leave, hence he was bound down for 28.03.2018.

7. On 28.03.2018, the learned Magistrate passed the impugned order (Annexure P-2) closing the evidence of the prosecution by order.

8. Thereafter on the application under Section 311 of the Code of Criminal Procedure being moved by the complainant through learned



Additional Public Prosecutor for the State (Annexure P-3), the learned Magistrate allowed the same vide order dated 02.04.2018 (Annexure P-4) and granted one opportunity to the prosecution to examine the witnesses as mentioned in the application and adjourned the case to 07.04.2018. On 07.04.2018 the learned Magistrate passed the impugned order closing the evidence of the prosecution by order.

9. Considering the aforesaid orders passed by the learned trial Court would reveal that the learned trial Court had shown unjustified haste in passing the impugned orders. It is worth noting that Investigating Officer of the case Inspector Gurdial Singh (retd.) was partly examined on 23.03.2018 and was bound down for 28.03.2018. On that date the witnesses were present in Court but could not be examined on account of Presiding Officer being on leave and was bound down for 28.03.2018. The order dated 28.03.2018 passed by the learned Magistrate would reveal that it was mentioned specifically that the Investigating Officer of the case was bound down for that date but had not put in appearance as such evidence of the prosecution was closed by order. It is worth mentioning that although the learned Magistrate by allowing the application (Annexure P-3) under Section 311 Cr.P.C had allowed the same vide order dated 02.04.2018(Annexure P-4) granting one more opportunity to the prosecution to examine prosecution witnesses namely Inspector Gurdial Singh, IO, Pritam Singh-Complainant, Sandeep Bansal, Kuldip Singh, Krishan Kumar victim/witness and Kaptan Singh-stamp vendor etc as mentioned in the application (Annexure P-3) and listed the matter for 07.04.2018 for recording their evidence.

10. The impugned order dated 07.04.2018 passed by the learned



Magistrate reads as under:-

“ An exemption application has been filed on behalf of the accused through his counsel. Heard. In view of the reasons mentioned therein, same is allowed for today only.

Perusal of the file reveals that on 02.04.2018 application u/s 311 Cr.P.C was allowed, subject to one and last opportunity to prosecution to conclude its evidence, failing which the evidence of prosecution will be closed by order without any justification or explanation. However, no PW has come present despite service. As such, finding no more justification to further adjourned the case for prosecution evidence, therefore, the prosecution evidence has been closed by order. Now the case is adjourned to 10.04.2018 for recording the statement of U/s 313 Cr.P.C.”

11. A bare perusal of the impugned order would reveal that it is specifically recorded by learned Magistrate that no prosecution witness has come present despite service and proceeded to close the evidence by order. Unfortunately, the learned Magistrate lost sight of the fact that when the service of the witnesses have been effected it becomes the duty of the Court to procure their presence by adopting coercive methods as are available under the Provisions of Cr.P.C and in such a case, non-appearance of the witnesses despite service, cannot be attributed to the complainant or the prosecution but the efforts should have been made by learned Court to procure their presence in accordance with law by issuance of bailable warrants, warrants of arrest etc. as the case may be, in accordance with law, but the learned Magistrate hastily passed the impugned orders ignoring the fact that the examination of witnesses were material for the just decision of the case and also the fact that they had not appeared despite service.

12. Therefore, in these circumstances, the impugned orders passed by learned Court are not sustainable in the eyes of law and are hereby set-



aside. The instant petition is accordingly disposed of by setting-aside the impugned orders and directing the learned trial Court to afford reasonable opportunities to the prosecution to conclude the evidence by examining the witnesses mentioned in the application (Annexure P-3) in accordance with law by giving short adjournments.

13. Since this case is of the year 2017, it will be open for the learned trial Court to take assistance of the responsible Police Officers for getting the service of witnesses effected.

14. The petition is disposed of in above terms.

15. Any observations made above shall not be construed as an opinion on the merits of the case.

(SANJIV BERRY)
JUDGE

04.04.2025

Gyan

i)	Whether speaking/reasoned?	Yes/No
ii)	Whether reportable?	Yes/No