

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-48801-2017 (O & M)

Date of decision: 22.11.2022

Faqir Chand ... Petitioner

V/s

State of Punjab and ors. ... Respondents

CORAM: HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present: Mr. Vikas Gupta, Advocate, for the petitioner.

Mr. Kirat Singh Sidhu, DAG, Punjab.

JASJIT SINGH BEDI, J. (Oral)

The present petition under Section 482 Cr.P.C. has been filed for quashing of the order dated 10.10.2017 (Annexure P-2) passed by the Judicial Magistrate Ist Class, Patti, vide which the evidence of the prosecution was closed by order and the order dated 05.12.2017 (Annexure P-1) passed by the Judicial Magistrate Ist Class, Patti, vide which the Trial Court has dismissed an application filed under Section 311 Cr.P.C. in FIR No.59 dated 26.07.2014 under Sections 326, 452, 323, 427, 34 IPC registered at Police Station Khem Karan, District Tarn Taran (Annexure P-3).

2. The brief facts of the case as emanating from the petition are that the petitioner-complainant got registered an FIR No.59 dated 26.07.2014 under Sections 326, 452, 323, 427, 34 IPC registered at Police

Station Khem Karan, District Tarn Taran. The copy of the FIR is attached as Annexure P-3 to the petition.

3. During the course of trial, when the official prosecution witnesses were not coming forward for getting their statements recorded, bailable warrants of ASI Kewal Singh, who is the investigating officer of the FIR were issued. He, however, failed to appear before the Trial Court. Thereafter, the Trial Court issued his warrants of arrest vide order dated 28.08.2017 and adjourned the matter to 20.09.2017.

On 20.09.2017, the said ASI Kewal Singh again did not appear before the Court and warrants of arrest were issued for 28.09.2017 when the witness did not appear. Once again warrants were issued for 10.10.2017 on which date, he again never appeared before the Court. Instead of adopting coercive steps to secure his presences, the Trial Court closed the prosecution evidence vide order dated 10.10.2017 (Annexure P-2).

4. Thereafter, on 20.11.2017, the petitioner-complainant moved an application under Section 311 Cr.P.C. through the APP for the State for summoning the prosecution witness ASI Kewal Singh, who was the investigating officer. A copy of the application is attached as Annexure P-4 to the petition.

The private respondents/accused contested the application and filed their reply. A true copy of the reply filed to the application under Section 311 Cr.P.C. is attached as Annexure P-5 to the petition.

5. The Trial Court vide impugned order dated 05.12.2017 (Annexure P-1) dismissed the application of the complainant-petitioner on the ground that the prosecution had availed numerous opportunities to

examine the prosecution witnesses and the application had been filed to delay the disposal of the case.

The aforesaid orders are under challenge in the present petition.

6. The learned counsel for the petitioner contends that the examination of the investigating officer is essential for the proper adjudication of the Trial. In fact, various attempts were made by the Court to summon the said witness as a prosecution witness but despite the various attempts, ASI Kewal Singh deliberately chose not to appear before the Trial Court. Instead of adopting coercive steps to secure his presence, the Trial Court had closed the prosecution evidence vide order dated 10.10.2017 (Annexure P-2). Thereafter, an application under Section 311 Cr.P.C. was moved which was also dismissed. It is his contention that the petitioner who is a complainant cannot be penalized for the act and conduct of the State in not presenting ASI Kewal Singh as prosecution witness. In the present case, the prosecution is to be conducted by the State through the Public Prosecutor and no fault can be found with the conduct of the petitioner. Even otherwise, under Section 311 Cr.P.C., the Court had ample powers to summon a material witness or recall and re-examine any witness if his evidence was essential for the just adjudication of the case. In the present case, as has already been submitted, the deposition of ASI Kewal Singh, who was the investigating officer was essential to prove the case of the prosecution. He, thus, contends that the present application be allowed and the said witness be summoned for examination as a prosecution witness.

7. The learned counsel for the accused-respondents No.3 and 5 contends that the present application has been moved only to delay the proceedings. The prosecution had availed numerous opportunities to lead

evidence but despite that fact, the said witness did not present himself in Court to get recorded his statement. Therefore, the application under Section 311 Cr.P.C. had been rightly dismissed.

8. The learned counsel for the State, on the other hand, contends that under Section 311 Cr.P.C., the Court has ample powers to summon a material witness if his evidence was essential for the just adjudication of the case. In the present case, the examination of ASI Kewal Singh, who was the investigating officer of the case was essential to prove the case of the prosecution.

9. I have heard the learned counsel for the parties.

10. Before proceeding further, it would be apposite to refer to the provisions of Section 311 Cr.P.C., which have been reproduced hereinbelow:-

"Any court may, at any stage of any inquiry, trial or other proceedings under this code, summon any person as a witness, or examine any person in attendance, though not summoned as a witness, or recall and re-examine any person already examined; and the court shall summon and examine or recall and re-examine any such person if his evidence appears to be essential to the just decision of the case."

11. This Court in the case of 'Om Parkash versus State of Haryana and others, 2015(3) RCR (Criminal) 557', has held as under:-

"10. In the present case, it prima facie seems that prosecuting agency was proceeding on a casual approach but the learned trial court should not have shown its helplessness, in securing the presence of remaining unexamined prosecution witnesses. Instead of closing the prosecution evidence, learned trial court should have taken coercive steps to secure the presence of unexamined prosecution witnesses. Under these circumstances,

it can be safely concluded that the impugned order passed by the learned trial court is patently illegal and the same cannot be sustained.

11. Learned trial court was not at the mercy of the prosecuting agency. In case the prosecuting agency was not taking due interest in prosecuting the case, by producing its witnesses in time, the learned trial court could have secured the presence of the unexamined witnesses by taking appropriate steps, including the coercive steps, if so required.

12. It is equally true that prosecuting agency was under legal obligation and duty bound to produce its witnesses in time, so as to ensure that no undue delay is caused in the trial. Having said that, this Court feels no hesitation to conclude that since the material witnesses namely ASI Sudhinder Kumar and HC Naval Singh could not be examined because of the laxity on the part of prosecution, petitioner was left with no other option except to approach this Court by way of instant petition, which deserves to be allowed.

No other argument was raised.

13. Considering the peculiar facts and circumstances of the case noted above, coupled with the reasons aforementioned, this Court is of the considered view that since the impugned order suffers from patent illegality, it cannot be sustained. Accordingly, the impugned order dated 24.7.2014 (Annexure P-1) passed by the learned JMIC, Hansi, closing the prosecution evidence, is hereby set aside.

14. Consequently, the learned trial court is directed to examine all the remaining unexamined witnesses including ASI Sudhinder Kumar and HC Naval Singh. Simultaneously, prosecuting agency, through the concerned officers of the department, is directed to ensure that no delay takes place at their instance and the unexamined prosecution witnesses are produced, before the learned trial court at the earliest. Since the criminal trial is pending for a considerable long time,

learned trial court shall make an endeavour to conclude it as early as possible, however, only after examining the left over prosecution witnesses.”

12. A perusal of Section 311 Cr.P.C. and the judgement in ***Om Parkash's case (supra)*** would show that the Court has ample powers to summon a material witness, or recall and re-examine any person already examined if his evidence appears to be essential for the just decision of the case. Further, the Trial Court is not powerless where it finds that there is laxity on the part of the prosecution to produce its witnesses. In fact, the Court ought to adopt coercive steps to secure the presence of unexamined prosecution witnesses, moreso, when they happened to be official witnesses.

13. In the present case, the Trial Court has shown complete helplessness in securing the presence of ASI Kewal Singh to depose as a prosecution witness. In fact by closing the prosecution evidence and dismissing the application under Section 311 Cr.P.C. it is the complainant who has been penalised for the act and conduct of the State. The Trial Court should have taken coercive steps to secure the presence of the unexamined witness.

14. In view of the above discussion, I find merit in the present petition. Therefore, the orders dated 05.12.2017 (Annexure P-1) and 10.10.2017 (Annexure P-2), both passed by the Judicial Magistrate Ist Class, Patti, are quashed. The application under Section 311 Cr.P.C. dated 20.11.2017 (Annexure P-4) is allowed. ASI Kewal Singh who is a material witness in this case shall be examined by the Trial Court on the next date of hearing before it or on any other date convenient to the Court on issuance of summons to him in accordance with law. It is also made clear that in case

ASI Kewal Singh plays truant with the Court and chooses not to appear as has been the case earlier, the Senior Superintendent of Police, Tarn Taran, shall take him into custody and produce him in the Court to depose as a prosecution witness. Thereafter, the Trial Court is directed to conclude the Trial within 08 weeks of the examination of the aforementioned witness i.e. ASI Kewal Singh.

15. Disposed of.

November 22, 2022
sukhpreet

(JASJIT SINGH BEDI)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No

सत्यमेव जयते

