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IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH

CRM-M-16118-2023 (O&M)

Reserved on 21.08.2025

Pronounced on 09.09.2025

ANKUR DAWAR

..... PETITIONER

VERSUS

STATE OF PUNJAB AND ANR.

..... RESPONDENTS

**CORAM: HON'BLE MR. JUSTICE SURYA PARTAP SINGH**

Present : Mr. Keshav Partap Singh, Advocate  
for the petitioner.

Mr. Rohit Bansal, Sr. DAG, Punjab.

Mr. Rahul Singh Birdi, Advocate  
for respondent No.2.

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**SURYA PARTAP SINGH. J.**

1. By invoking the inherent jurisdiction vested in this Court by virtue of Section 482 of the Code of Criminal Procedure, the present petition has been filed by the petitioner for quashing/setting aside the order dated 14.12.2022, passed by learned Judicial Magistrate 1<sup>st</sup> Class Ludhiana, hereinafter being referred as "trial Court" only.

2. By virtue of above mentioned impugned order, the learned trial Court has closed the prosecution evidence by Court order, and proceed further with the trial.

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3. The impugned order has been challenged by the petitioner on the ground that the order to close prosecution evidence by Court order, by the learned trial Court, is illegal, arbitrary, amounting to denial of justice to the petitioner. In addition to above, the petitioner has also sought the setting aside of order dated 21.03.2023, whereby the learned Additional Sessions Judge dismissed the revision petition against the impugned order, while holding that the revision petition is not maintainable as the order of closing the prosecution evidence is an interlocutory order.

4. In nut-shell the facts emerging from record are that the above mentioned orders have been passed in a trial pertaining to FIR No.11 dated 24.02.2016, under Sections 420, 465, 467, 468 and 471 IPC, Police Station Darsi, District Police Commissionerate, Ludhiana. In the above mentioned FIR once the investigation was completed by the police, a challan had been filed on 06.10.2016 and after framing of charge the trial is in progress. It shall not be out of place to mention here that in the above mentioned trial once the charge was framed against the respondent on 05.08.2017, the case was fixed for prosecution evidence and after giving numerous opportunities for prosecution evidence, the learned trial Court by virtue of order dated 14.12.2022 closed the prosecution evidence and fixed the case for statement of accused under Section 313 Cr.P.C.

5. It is relevant to mention here that after closing of prosecution evidence the statement of accused under Section 313 Cr.P.C. has been recorded on 23.01.2023. Subsequent thereto, i.e. on 24.02.2023, an application was moved by the petitioner for permission to lead additional evidence under Section 311 Cr.P.C. However the same has been dismissed.

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6. It has been contended by learned counsel for the petitioner that in the present case valuable rights of the petitioner are involved and that without passing any speaking order and without affording appropriate opportunity to lead evidence, the prosecution evidence has been closed by the learned trial Court. As per learned counsel for the petitioner in fact the chronology of events pertaining to instant case would show that the delay in recording of prosecution evidence has been on account of non-appearance of the accused on number of occasions and not due to any lapse attributable to the petitioner or the prosecution. The learned counsel for the petitioner has further argued that on numerous occasions when the case was fixed for prosecution evidence, the accused did not turn up before the Court and moved application seeking for exemption from personal appearance.

7. In addition to above, it has also been contended by learned counsel for the petitioner that the offence for which the accused are facing trial is serious in nature being an offence punishable with imprisonment for life and therefore, without adopting all the measures to procure the presence of prosecution witnesses before the Court, the Court should not have close the prosecution evidence, merely on the ground that sufficient opportunities have already been afforded to the petitioner. According to learned counsel for the petitioner in fact the effective opportunities to the prosecution to lead its evidence are very few and grossly inadequate. While craving for interference and indulgence of extraordinary jurisdiction of this Court, learned counsel for the petitioner has assured that the petitioner being complainant is ready to furnish an undertaking that he will close his evidence without any delay.

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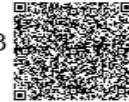
8. Per contra, learned counsel for the respondent-accused has argued that in the present case after framing of charge on 05.08.2017 the case was adjourned on 69 occasions for recording of prosecution evidence and that the prosecution failed to conclude its evidence despite such a large number of opportunities and therefore, no course was left with the learned trial Court but to close the prosecution evidence by Court order. As per learned counsel for the respondents, there is no justification in the present petition, moved by the petitioner, who himself has been guilty of not appearing before the trial Court for recording the statement. Learned counsel for the respondents has claimed that there is no merit in the present petition and the same deserves dismissal.

9. The record has been perused carefully.

10. In the present case, it is relevant to mention here that one of the prayer made by the petitioner in the present petition is the setting aside of order dated 14.12.2022. The above mentioned order passed by learned trial Court reads as under:-

*“PW5 Retd. ASI Makhan Singh is present and completely cross-examined. No other PW is present. Perusal of file reveals that charge in the present case was framed on 05.08.2017 and since then number of opportunities have been taken by prosecution to conclude evidence, but the prosecution has failed to conclude the same. This Court does not deem it appropriate to adjourn the case for the same purpose. As such, prosecution evidence is hereby closed by court order and the case is fixed for 03.01.2023 for recording the statement of accused persons under Section 313 Cr.P.C.”*

11. A bare perusal of the above mentioned order shows that before the closure of prosecution evidence, the learned trial Court did not resort to coercive methods to procure the presence of prosecution witnesses in the

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present case. So much so, the above mentioned order nowhere shows as to whether for 14.12.2022 service of summons upon the prosecution witnesses was duly effected or not. In such circumstances this inference can be drawn that the impugned order is silent about the efforts made by the learned trial Court for procuring the presence of prosecution witnesses in the Court.

12. It is also relevant to mention here that once the charge was framed against the accused till the closure of prosecution evidence the case was adjourned on 69 occasions, but out of those 69 occasions on 41 occasions, the evidence could not be recorded as the accused was not present before the learned trial Court and he repeatedly moved applications, seeking for exemption from personal appearance on one ground or the other. It is also relevant to mention here that in addition to above mentioned 39 occasions, on 11 occasions the case was adjourned in the absence of accused due to Pandemic Covid 19 and on 02 occasions prosecution evidence could not be recorded as the learned Presiding Officer was on leave. In addition to above this fact, also, can't be ignored that and on 06 occasions the case was fixed for arguments on application under Section 65-B of Evidence Act. For adjournment of the case on the above mentioned 58 occasions any lapse cannot be attributed to the prosecution.

13. In view of above mentioned facts and figures, it transpires that in the present case only 11 opportunities for prosecution evidence were provided by the learned trial Court, and the copy of orders available on record shows that the learned trial Court conducted the proceedings of the case in a very casual manner and on none of occasion it was recorded by the learned trial Court as to whether the summons issued to the prosecution witnesses were received back



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duly served or not, or if the summons were not returned either served or unserved what step was taken by the learned trial Court. In fact in the abovesaid condition it was expected from the learned trial Court that:-

*(a) If the summons issued to prosecution witnesses were not returned either served or unserved, action should have been taken against the service agency.*

*(b) If the summons received back unserved then it should not have been treated to be a proper service upon the witnesses and fresh summons should have been issued.*

*(c) If the summons duly served upon the witnesses and the witnesses did not turn up before the trial Court some coercive steps should have been taken against the witnesses to procure their presence in the Court.*

14. While dealing with similar situation the Division Bench of Mysore High in the case of ***State of Mysore v. N.G. Narasimhegowda; 1965 (2) Cr LJ 48*** emphasized that it is “duty of the Court to issue coercive process for securing presence of the witnesses. It is further observed that having once issued summons to secure attendance of witnesses, it was a duty of the Magistrate to have enquired into the cause of non-service or non-return of summons and to have taken steps as were necessary in the circumstances of the case to secure the attendance of witnesses, particularly when there was no material before him to show that there had been any remissness on the part of the prosecuting agency.”

15. Similarly in the case of ***Kashi Nath Pandit v. Onkar Nath 1975 Cr. Law Journal 1090***, the High Court of Jammu and Kashmir held that if the witness does not turn up before the Court, it is not the fault of the prosecution and in such eventuality, an application is cast upon the Court to discharge its



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duty enforcing his attendance. It has further been held that for the above said purpose the Court should use all possible coercive methods.

16. Similarly this High Court in the case of **Har Chand Singh v. State of Punjab and others : 2011(2) RCR (Criminal) 693** observed that closing of prosecution evidence without issuing coercive process for ensuring presence of prosecution witnesses, is not justified. Similar view has been taken by this Court in the case of **Baljinder Singh and others v. State of Haryana and another** in Criminal Revision No.1391 of 2012 (O&M) decided on 10.05.2012.

17. As far as the factual matrix of the instant case is concerned, a perusal of copies of daily orders, recorded by the learned trial Court, reveals that any such measure was not adopted by the learned trial Court, for want of any action, as per above discussed law, it is apparent that in the instant case, the learned trial Court has failed to perform the onus duty cast upon it for conducting a fair and legal trial. Simply by closing the prosecution evidence, without looking into the fact that valuable rights of the complainant, too, are involved in the instant case, and without any justified reason, it has closed the prosecution evidence and therefore, the order passed by learned trial Court in the given facts situation perverse on the face of it. Hence the same is hereby held to be not sustainable in the eyes of law, and therefore, liable to be set aside.

18. As a sequel to above mentioned observations, the order dated 14.12.2022, whereby the learned trial Court closed the prosecution evidence is hereby set aside and a direction is issued to the learned trial Court to make serious efforts, as per law, to procure the presence of prosecution witnesses in the Court, record their statements and proceed with the trial as per laid down procedure. However, it is made clear that the petitioner, who is seeking



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reopening of prosecution evidence will have to co-operate. He is directed to appear before the learned trial Court on the date fixed for prosecution evidence at his own. He will not be afforded more than 02 opportunities to get his statement recorded.

19. In the present case, the petitioner has also sought the setting aside of order dated 21.03.2023 passed by learned Additional Sessions Judge, whereby the revision petition preferred by the petitioner was dismissed by learned Additional Sessions Judge. However, in view of the fact that permission to lead evidence has already been afforded to the petitioner, any finding qua above mentioned order, need not to be returned.

20. As a sequel to above mentioned observations, the present petition stands partly allowed, accordingly.

**(SURYA PARTAP SINGH)  
JUDGE**

**09.09.2025**

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Whether speaking/reasoned : Yes  
Whether Reportable : No