
(2020) 10 SHI CK 0217
In the High Court Of Himachal Pradesh
Case No : CRMMO No. 329 Of 2020

Chuni Lal	Vs	APPELLANT
State Of H.P		RESPONDENT

Date of Decision : 29-10-2020

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 482

Citation : (2020) 10 SHI CK 0217

Hon'ble Judges : Sandeep Sharma, J

Bench : Single Bench

Advocate : N.K.Thakur, Divya Raj Singh, Sudhir Bhatnagar, Arvind Sharma, Kunal Thakur

Final Decision : Dismissed

Judgement

Sandeep Sharma, J

1. By way of instant petition filed under Section 482 Cr.P.C., challenge has been laid to order dated 26.10.2020, passed by learned Special Judge, Chamba, H.P., whereby, evidence of the petitioner in defence has been ordered to be closed in Sessions Trial No. 24 of 2018, titled as State vs. Chuni Lal.
2. Having regard to the nature of the order proposed to be passed in the case at hand, no reply is intended to be filed by respondent-State.
3. Having heard learned counsel representing the parties and perused the material available on record, especially, zimni orders dated 16.3.2020, 17.9.2020 and impugned order dated 26.10.2020, this Court finds that process issued for service of defence witnesses was received back, duly served on 16.3.2020, but since, none of defence witnesses appeared, learned Court below directed to serve them by way of bailable warrants, returnable for 25.03.2020. It stands recorded in order dated 16.3.2020 that warrant be got executed through special messenger for the said date. However, It appears that since on 25.3.2020, there was complete lock down in the Country on account of COVID-19, matter could

not be taken by the Court and as such, same came to be listed before Court below on 17.9.2020, on which date, Court below ordered that order dated 16.3.2020, be complied with for 26.10.2020. On 26.10.2020, no defence witness came present. Learned defence counsel apprised the Court below that since witnesses hail from COVID-19 prone area, they have not been able to come present, but the fact remains that Court below ignoring the aforesaid explanation rendered on record by the learned defence counsel proceeded to close the evidence of defence and as such, accused/petitioner has approached this Court in the instant proceedings, praying therein to set aside the aforesaid impugned order.

4. It is quite apparent from the perusal of order dated 16.3.2020 that bailable warrants were ordered to be issued in the sum of Rs. 2,000/- for 25.3.2020, but the same could not be issued in the wake of complete lock-down on account of COVID-19.

5. Careful perusal of order dated 17.9.2020, itself suggests that Court below having taken note of the fact that bailable warrant have not been issued in terms of order dated 16.3.2020, again directed process serving agency to issue bailable warrant in terms of order dated 16.3.2020, returnable for 26.10.2020. However, having carefully perused order dated 26.10.2020, this Court finds substantial force in the submission made by learned Sr. Counsel representing the petitioner that once no report with regard to execution of bailable warrants issued in terms of order dated 16.3.2020 for securing the presence of defence witnesses was received by Court below, it should have not proceeded to close the evidence of defence. Once, Court had issued bailable warrants for securing the presence of defence witnesses, it ought to have called for the report of process serving agency with regard to execution of bail warrants before closing the evidence of defence, if any. There is no mention, if any, with regard to execution of bailable warrants in order dated 26.10.2020, rather Court below having taken note of submissions made on behalf of defence counsel that defence witness has been not able to come present on account of COVID-19 proceeded to close the evidence of defence. Since, presence of defence witnesses were to be secured by way of execution of bailable warrants, Court without taking note of report of process serving agency regarding execution of bailable warrants, could not have passed order dated 26.10.2020 and as such same being not sustainable in the eye of law, deserves to be quashed and set aside.

6. Otherwise also, Court below, ought not have been brushed aside explanation rendered by defence counsel qua the absence of defence witnesses on 26.10.2020, especially, when it is known to everybody that now days, it is not easy to travel on account of COVID-19.

7. Consequently, in view of above, order dated 26.10.2020 is quashed and set aside and Court below is directed to issue fresh bailable warrants to the defence witnesses for securing their presence for the date to be fixed by it.

8. Needless to say that till the time, presence of defence witnesses is secured by way of bailable warrants or non bailable warrants, Court shall not proceed with further proceedings.

Registry of this Court is directed to apprise the learned Court below with regard to passing of instant order today itself by e-mail or telephonically, enabling it to do the needful in terms of instant order.a