

**(2010) 04 SHI CK 0104**  
**In the High Court Of Himachal Pradesh**

Hardev Singh

APPELLANT

Vs

State of H.P.

RESPONDENT

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**Date of Decision :** 22-04-2010

**Acts Referred:**

Constitution of India, 1950 — Article 21  
Penal Code, 1860 (IPC) — Section 302

**Citation :** (2010) 04 SHI CK 0104

**Hon'ble Judges :** Dev Darshan Sood, J

**Bench :** Single Bench

**Final Decision :** Allowed

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## Judgement

Dev Darshan Sud, J.—This petition has been preferred by the petitioner who has been charged for offences u/s 302 of the Indian Penal Code.

2. Two orders need be noticed. One is order dated 18.01.2010 which records that two defence witnesses present were recorded. None else was present. Bailable warrants in the sum of Rs. 1,000/- were issued against the other witness. On the next date, the learned Court closes the evidence holding that no defence witness is present. As sufficient time had been granted to the petitioner-accused, no further opportunity could be granted.

3. At this juncture, the order passed by this Court on 7.1.2010 in Criminal Revision No. 6 of 2010 may be considered. The petitioner had approached this Court praying that the order passed by the learned trial Court calling upon him to serve witnesses by dasti summons could not be upheld as the petitioner was in police custody. The revision petition was allowed by a detailed order dated 7th January, 2010.

4. Adverting to the facts in the present case, the Court holds that no service could be effected on the witness as process fee had not been filed. Surely, this blame could not be laid at the door of the petitioner who is in jail and is not in a position to file process fee etc. The learned Court below should have been aware

regarding the fact that the like liberty of the petitioner cannot be curtailed in the manner in which it was done by denying him opportunity of leading evidence. Surprisingly, I also find that observations have been made by the Court against S/ Shri T.R. Chandel, R.K. Chauva and Davinder Chandel, Advocates, saying that they are in the habit of filing applications with an ulterior motive to delay the proceedings and to browbeat the Presiding Officer of the Court. These observations are quiet uncalled for. The Court is the master of the way in which a case has to be conducted but this is circumscribed by certain principles of law and it does not vest unfettered and uncontrolled powers in the Court to pass scathing remarks/observations against counsel. If submission has been made for getting the case transferred that was to be dealt with on its own merit and not by scathing and omnibus observations against counsel. These observations shall be expunged from the record and the order.

5. This petition is accordingly allowed. The petitioner herein shall be given ample and adequate opportunity of leading his evidence in defence. This order has been passed keeping in view the Constitutional guarantee under Article 21 of the Constitution of India which provides that no person shall be deprived of his life or personal liberty, save and except, in accordance with law. This petition is disposed of. The Court shall proceed afresh in accordance with law. The record, if received, shall be sent back immediately. Let a copy of this order be communicated to the Court below.