

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Crl. Misc. No. M-19844 of 2015

Date of decision : 27.11.2015

Tasveer

.....Petitioner

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MRS. JUSTICE ANITA CHAUDHRY

1. Whether Reporters of the local papers may be allowed to see the judgment ?
2. To be referred to the Reporters or not ? Yes
3. Whether the judgment should be reported in the Digest ? Yes

Present: Mr. Saurav Verma, Advocate and
Mr. Manoj Tanwar, Advocate
for the petitioner

Mr. Amrit Narwal, DAG Haryana

ANITA CHAUDHRY, J. (ORAL)

This petition has been filed under Section 482 Cr.P.C. and the petitioner seeks quashing of the order dated 28.4.2015 vide which the application filed by the petitioner under Section 311 Cr.P.C. for recalling the main witnesses namely PW-1, PW-2 and PW-6 for further cross-examination was rejected.

The petitioner is facing trial in FIR No. 72 dated 13.5.2012 registered under Sections 302/34/120-B/212 IPC and Sections 25, 54, 59 of the Arms Act. The complaint was lodged by Arun Kumar. Arun's father Ashok Singla was running a school at Julana. The complainant and his brother Ajay Singla were going on foot after finishing their work in Mandi Julana. There was a huge crowd as a tractor trolley had been parked near the Grain Market. The

complainant's father was going on his motorcycle from Mandi to their school. On seeing the large crowd, he stood on one side. The complainant called out loudly asking his father to take the motor cycle from a side, three young boys came on a motorcycle and one of them raised lalkara that Ashok was alone and he should not escape. All the three fired gun shots which hit him on the chest, stomach, ear-pit, hand and on his head. The motive spelled out in the FIR was the dispute relating to the land over which the school had been built between the deceased and Lehna Singh and litigation was pending in the Court for a number of years. Earlier a case had been registered under Section 307 IPC against Lehna Singh who had been convicted. With respect to this land, Lehna Singh in connivance with others had printed and distributed pamphlets relating to the school land. The deceased had been receiving threats. The allegations were that Lehna Singh, Tasvir Singh and Sangram Singh in connivance with each other had fired shots upon his father. The trial had commenced and prosecution witnesses had given their statement in the Court in 2012 and then in 2013.

An application Annexure P-2 under Section 311 IPC was moved by one of the accused pleading that the case had been registered on suspicion, misunderstanding and misconception of the complainant, his relatives and family members. The accused had made enquiries to find out if there was any involvement and during the enquiry it was revealed that the accused were innocent and had no role to play and the complainant and his relatives had admitted their innocence before the Panchayat earlier and lastly on

08.03.2015 and, therefore, they wanted to summon the complainant, his brother and Jai Bhagwan PW-6 to bring out the truth and reach at a just and proper decision. It was pleaded that these witnesses were the real sons and real brothers of deceased Ashok Singla and some important question could not be put to these witnesses during their cross examination due to inadvertence.

The trial Court after hearing both the sides dismissed the application vide order Annexure P-6.

Aggrieved thereby, the petitioner has preferred the present petition challenging the impugned order invoking the provisions of Section 482 Cr.P.C.

I have heard both the sides at length.

The main submission on behalf of the petitioner was that the complainant had admitted before the Panchayat that the accused were not involved and they wanted to cross examine the witnesses again. It was urged that the trial Court has rejected their application solely on the ground that there was a delay in filing the application and the questions which were to be put to the witnesses had not been disclosed. It was urged that they could not have disclosed the question as it would have revealed their defence and it could only be when a witness is under cross examination. It was urged that the recall can be made even at a belated stage and that was not a good ground for rejection. It was urged that the accused was only asking for a fair trial and proper opportunity should be given to them and the recall prayer should have been allowed. It was urged that in **P.**

Sanjeeva Rao vs. State of A.P., 2012(3) RCR(Criminal) 653 prayer

for recall was allowed after 4 years. Reliance was placed upon ***Shiv Kumar Yadav vs. State, 2015(219) DLT 76, Chandra Shekhar Prasad Singh vs. State of Jharkhand, 2015(1) RCR(Criminal) 77*** and ***Hoffman Andreas vs. Inspector of Customs, Amritsar, 2000 (10) SCC 430.***

The petition has been opposed by the State and the State counsel has submitted that it was a case of old rivalry and the incident had taken place on 13.05.2012 at 5.45/6.00 p.m. and sons are the eye witnesses and the FIR had been lodged on the same day and there is no reason for recall and there was a motive for the crime and the witnesses have deposed and the application has been made only to delay the trial. It was urged that the statements had been recorded in 2013 and now after 2 years the petitioners are stating about the inquiry by them and the application was rightly dismissed by the trial Court.

After hearing both the sides and going through the record and the statements available on record, I find that there is no merit in the petition. The trial Court had dismissed the application by virtue of order dated 28.04.2015 which in substance is as under:-

“7. From perusal of case file, it is revealed that the complainant/eye witness in this case when appeared in the witness box as PW1 has fully supported the prosecution case. Also, PW2 (eye witness) and PW6 Jai Bhagwan while appearing in the witness box have fully supported the case of prosecution. From perusal of file it is further revealed that the complainant PW1, PW2 and PW6 have been thoroughly cross-examined by learned counsel for the applicant/accused on each and every

aspect. The applicant-accused Tasvir in the application in hand did not specify as to what material questions were left to be put to PW1, PW2 and PW6 in cross-examination. In the absence of the same the submission made by learned counsel that recalling of PW1, PW2 and PW6 for further cross-examination is necessary for just and proper decision of the case carry no weight.

8. It is also pertinent to mention here that the complainant PW1 was examined on 23.5.2013, PW2 on 30.7.2013 and PW6 on 6.9.2013. Now almost two years thereafter the application in hand has been moved by the accused pleading innocence. Only 7/8 prosecution witnesses are left to be examined and the case is at the fag end. In view of above circumstance, this court is of the view that application in hand is nothing, but an abuse to process of law. For the aforesaid reasons, the application in hand is hereby rejected.”

Learned counsel for the petitioner had referred to **Shiv Kumar Yadav's case (supra)**, perhaps the counsel was not aware that the judgment of the Delhi High Court dated 04.03.2015 had been set aside by the Hon'ble Apex Court in Crl. Appeal Nos. 1187-1188 of 2015 on 10.09.2015. Para 29 of the judgment sums up the reasons for disapproving the view of High Court.

The power under Section 311 Cr.P.C. can be invoked by the court only in order to meet the ends of justice for strong and valid reasons and the same must be exercised with care, caution and circumspection. The court should bear in mind that fair trial entails the interest of the accused, the victim and the society and, therefore, the grant of fair and proper opportunities to the

persons concerned, must be ensured being a constitutional goal, as well as a human right.

In Hoffman Andreas case cited by the petitioner, the counsel who was conducting the case was ill and died during the progress of the trial. The new counsel sought recall on the ground that the witnesses could not be cross-examined on account of illness of the counsel. This prayer was allowed in peculiar circumstances with the observation that normally a closed trial could not be reopened but illness and death of the counsel was in the facts and circumstances considered to be a valid ground for recall of witnesses.

The petitioner had prayed that some important question could not be put to these witnesses during their cross examination due to inadvertence. Lengthy cross examination was effected. The witnesses can not be recalled on mere whims and fancies of the defence. There have to be cogent and convincing reasons for recall. Mere fact that the accused was in custody and he would suffer by delay can not a ground to allow the recall of the witnesses. There is no basis of holding that any prejudice would be caused to the accused unless the witnesses are recalled. Expeditious trial is sine qua non in a heinous offence like the present one. It is not only the interest of the accused but also the interest of the victim which the Court has to bear in mind. The trial Court has given effective opportunity to the accused to cross examine the witnesses. The object of Section 311 Cr.P.C. is to impose a duty on the Court to determine the truth and to render just decision. The Court while

disposing of the application considers whether it is essential to consider the examination or to recall him for further examination if it is necessary for just decision of the case. The trial Court had appreciated the matter in the right perspective and had recorded cogent reasons. Learned counsel for the petitioner could not point any material/reason which lays cogent reason to suggest as to how and in what manner re-calling the witnesses were relevant in the murder case. No interference is warranted. The trial Court had dismissed the prayer giving valid reasons and can not be interfered with.

In the light of the aforesaid reasons finding no merit, the petition is dismissed.

27.11.2015

reena

(ANITA CHAUDHRY)
JUDGE