

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**Criminal Misc.No.M-22763 of 2014(O&M)
Date of Decision: August 26, 2015**

Nirmal Singh

...Petitioner

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE NARESH KUMAR SANGHI

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

Mr.Kuldeep Tiwari, Addl.AG, Haryana.

Mr.D.S.Adlakha, Advocate,
for the informant.

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

Naresh Kumar Sanghi, J.(Oral)

CRM-16880-2015

Prayer in this application is for pre-poning the case
from 31.07.2015 to an early date.

Learned counsel for the applicant submits that the
present application has been rendered infructuous.

Ordered accordingly.

CRM-16779-2015

Prayer in this application is for placing on record the
deposition of Dr.Dependar (DW12) and for grant of exemption
from filing certified copy of Annexure P-7.

After hearing learned counsel for the parties and going through the contents of the application, which is duly supported by an affidavit, the same is allowed. The applicant is granted exemption from filing the certified copy of Annexure P-7 and the same is taken on record, subject to all just exceptions.

CRM-M-22763-2014

The present petition under Section 482, Cr.P.C has been filed by Nirmal Singh, an accused facing trial for the offences punishable under Sections 302, 323 and 452 read with Section 34, IPC, in a case arising out of FIR No.122, dated 21.06.2013, registered at Police Station, Chhappar, District Yamuna Nagar, for quashing of the order dated 03.07.2014 (Annexure P-6) passed by learned Additional Sessions Judge, Yamunanagar at Jagadhri whereby the application (Annexure P-2) presented by the petitioner for issuing directions to the Jail Authorities for getting the petitioner physically examined and to issue disability certificate, was dismissed.

Learned counsel for the petitioner submits that in utter non-compliance of the settled norms for allowing the defence evidence during trial by an accused, learned trial Court has dismissed the application of the petitioner to bring on record his disability certificate. He further submits that as per the case set-up by the prosecution, the petitioner along with his

co-accused scaled-over the wall and entered into the house of Sehaj Ram for committing the murder; in view of the disability of the petitioner, he was not in a position to scale-over the wall and as such, he had prayed before learned trial Court for his medical examination by a competent doctor and thereafter, to issue the disability certificate and produce the same before learned trial Court. The said prayer has been declined which tantamounts to scuttling the defence of the petitioner.

Learned counsel for the State assisted by Mr.D.S.Adlakha, learned counsel for the informant/complainant, though opposed the prayer of learned counsel for the petitioner but could not substantiate as to why the prayer made by learned counsel for the petitioner be not accepted.

I have heard learned counsel for the parties and with their able assistance gone through the material available on record.

The petitioner is facing trial before the Court of Session for having committing the offences punishable under Sections 302, 323 and 452 read with Section 34, IPC. The trial is at the stage of leading defence evidence. At that stage, application (Annexure P-2) was presented before learned trial Court for getting the medical examination of the petitioner conducted by a doctor for issuance of the disability certificate and learned trial Court dismissed the said application.

Section 233 Cr.P.C., deals with the provision for

leading defence evidence during trial before the Court of Session. The same is reproduced below:-

“233. Entering upon defence.

(1) Where the accused is not acquitted under section 232, he shall be called upon to enter on his defence and adduce any evidence he may have in support thereof.

(2) If the accused puts in any written statement, the Judge shall file it with the record.

(3) If the accused applies for the issue of any process for compelling the attendance of any witness or the production of any document or thing, the Judge shall issue such process unless he considers, for reasons to be recorded, that such application should be refused on the ground that it is made for the purpose of vexation or delay or for defeating the ends of justice.”

In the matter of **State of M.P. vs. Badri Yadav & Anr.**

(2006) 9 SCC 549, Hon'ble the Supreme Court held that under Section 233, Cr.P.C., the accused can enter upon defence and he can apply for the issue of any process for compelling the attendance of any witness in his defence.

In the matter of **Kalyani Baskar** vs.

M.S.Sampoornam 2007(1) RCR (Criminal) 311, Hon'ble the Supreme Court dealt with the meaning of fair trial and held that 'Fair trial' includes fair and proper opportunities allowed by way

to prove the innocence by the accused. Adducing evidence in support of the defence is a valuable right and denial of the same means the denial of fair trial.

In the matter of **Rattiram & Ors. vs. State of M.P through Inspector of Police, 2012(2) RCR (Criminal) 471,** Hon'ble the Supreme Court dealt with the scope of fair trial and held that the concept of fair trial and the conception of miscarriage of justice are not in the realm of abstraction. A fair trial is required to be conducted in such a manner which could totally ostracise injustice, prejudice, dishonesty and favouritism. It also includes fair and proper opportunities allowed by law to the accused to prove innocence and, therefore, adducing evidence in support of the defence is a valuable right and denial of that right means denial of fair trial. It was also held that denial of fair trial is crucifixion of human rights.

In view of the totality of the facts and circumstances of the case, the order dated 03.07.2014 (Annexure P-6) passed by learned trial Court is set aside. It is directed that learned trial Court shall afford adequate opportunity to the petitioner to be produced before the Medical Officer who would physically examine the petitioner and issue disability certificate as per norms. Learned trial Court would also afford an opportunity to the petitioner to examine the said Medical Officer to prove the said medical disability certificate. It is made clear that the

petitioner/accused, if deliberately delay the trial in the garb of this order, then learned trial Court would be free to pass the appropriate orders

Disposed of accordingly.

August 26, 2015
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(Naresh Kumar Sanghi)
Judge