

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

**CRM-M-28545 of 2015 (O&M)
Date of Decision: 7.9.2015**

Sativ Jain

--Petitioner.

Vs.

State of Punjab and another

--Respondents.

CORAM : HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present : Mr. V.D.Bahl, Advocate
for the petitioner.

RAMESHWAR SINGH MALIK J. (ORAL)

CRM-28791 of 2015

Applicant seeks permission to place on record Annexures P-16 to P-18 and also seeks exemption from filing certified copies thereof.

Application is allowed, as prayed for.

CRM stands disposed of.

CRM-M-28545 of 2015

Feeling aggrieved against the impugned order dated 10.8.2015 (Annexure P-12), passed by the learned Additional Sessions Judge, Amritsar, whereby application of the petitioner

permitting him to summon PW-4 namely Suraj for recording his statement for comparison with transcription of his statement already recorded in the mobile phone was dismissed, petitioner has approached this Court by way of instant petition under Section 482 of the Code of Criminal Procedure ('Cr.P.C.' for short).

Learned counsel for the petitioner submits that petitioner is the only accused in the present case. He further submits that the document which is being sought to be produced in his evidence is part of the judicial record, thus, in proper custody. There is not even the remotest scope of any fabrication thereof, at the instance of the petitioner. He would next contend that no prejudice is going to be caused to the prosecution if the petitioner-accused is permitted to lead this piece of evidence, which would be in the form of scientific evidence and will be very important in order to facilitate the learned trial court to arrive at a judicious conclusion. He prays for allowing the present petition.

Notice of motion.

On the asking of the Court, Mr. K.D.Sachdeva, Additional A.G. Punjab, accepts notice on behalf of the State.

Mr. Vaibhav Narang, Advocate, accepts notice on behalf of respondent No.2-complainant.

Learned counsel for respondent No.2-complainant vehemently opposes the present petition contending petitioner had sufficient opportunities at earlier point of time, but he did not avail the same. He further submits that present petition is not even maintainable in the present form, as the impugned order is a

revisable order. He would next contend that throughout the leading of prosecution evidence, petitioner never put any such question to any of the prosecution witnesses at the time of their cross-examination and now he cannot be permitted to fill a serious lacuna in his case at this belated stage. He prays for dismissal of the present petition.

Similarly, while endorsing the arguments raised by learned counsel for respondent No.2, learned counsel for the State submits that present petition is misconceived and the same is liable to be dismissed. He also prays for dismissal of the present petition.

Having heard the learned counsel for the parties at considerable length, after careful perusal of the record of the case and giving thoughtful consideration to the rival contentions raised, this Court is of the considered opinion that keeping in view the peculiar facts and circumstances of the present case, instant one has been found to be a fit case, warranting interference at the hands of this Court, while exercising its inherent jurisdiction under Section 482 Cr.P.C., for the following more than one reasons.

It is the philosophy of our criminal jurisprudence that every accused must get full opportunity to defend himself. Learned counsel for the respondents could not substantiate any of their arguments, particularly as to what was the basis of their apprehension that some kind of prejudice would be caused to the prosecution if the petitioner is permitted to summon PW4-Suraj, except that the petitioner is trying to delay the trial. Having said that, this Court feels no hesitation to conclude that learned trial court failed

to appreciate the abovesaid golden principle of law, while denying this opportunity to the accused to defend himself, by summoning PW4-Suraj. Thus, the impugned order cannot be sustained and the same is liable to be set aside.

It is also pertinent to note here that the prosecution took almost three years to conclude its evidence. Petitioner has not caused any delay so far. Had the learned trial court allowed the application of the petitioner, trial itself might have been concluded so far. In fact, serious prejudice seems to have been caused to the petitioner by passing of the impugned order. Further, learned counsel for the petitioner has been found fully justified in contending that the evidence sought to be produced by the petitioner will certainly facilitate the learned trial court to arrive at an judicious conclusion.

Further, rules of procedures are handmade of justice. The object of procedural law is to advance the cause of justice. Until and unless, any accused has made himself disentitled because of any serious misconduct during the course of trial, he should not be forced to go home with this grouse that he was not granted full opportunity to defend himself, by the court of law. Since the learned trial court could not appreciate the true import of the abovesaid proposition of law, it committed a serious error of law, while passing the impugned order and the same cannot be sustained, for this reason also.

No other argument was raised.

Considering the peculiar facts and circumstances of the case noted above, coupled with the reasons aforementioned, this Court is of the considered opinion that the present petition deserves

to be allowed. Consequently, the impugned order dated 10.8.2015 (Annexure P-12) passed by the learned Additional Sessions Judge, Amritsar, is hereby set aside. Application of the petitioner for summoning PW4-Suraj for recording his statement for comparison with transcription with his statement already recorded in his mobile phone is allowed. The learned trial court is directed to summon PW4-Suraj, permitting the petitioner to lead this piece of evidence in his defence. However, it is made clear that learned trial court shall ensure that no undue delay is caused in the trial, at the instance of the petitioner.

Resultantly, with the abovesaid observations made and directions issued, present petition stands allowed, however, with no order as to costs.

(RAMESHWAR SINGH MALIK)
JUDGE

7.9.2015
AK Sharma