

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-39466 of 2014 (O&M)

Date of Decision: 13.01.2015.

Suraj Parkash Loomba and another PETITIONER(s)

Versus

State of Punjab RESPONDENT

CORAM:- HON'BLE MRS.JUSTICE LISA GILL

Present: Mr. M.J.S. Bedi, Advocate for
Mr. Sahil Kaushal, Advocate for the petitioners.

Mr. S.S.Chaudhary, DAG, Punjab.

LISA GILL, J.(Oral)

Petitioners prays for quashing of order dated 10.07.2014 (Annexure-P7) passed by the learned Judicial Magistrate 1st Class, Ludhiana as well as the order dated 21.10.2014 (Annexure-P9) passed by the learned Additional Sessions Judge, Ludhiana, whereby the petitioners' application dated 07.07.2014 for recalling prosecution witness Bikramjit Singh has been dismissed.

The petitioner is accused in FIR No.237 dated 05.08.1998 under Sections 420, 467, 468, 471 and 120-B of the Indian Penal Code registered at Police Station Sadar,

Ludhiana.

On 03.07.2014, PW-Bikramjit Singh the Investigating Officer of the case was examined. It is averred that he had left the Court without signing his statement and it was ultimately signed on 07.07.2014. It is on this date that the co-accused of the petitioners, cross-examined the said witness but as the petitioners' counsel was busy in another Court, request was made to defer the cross-examination on their behalf for the post-lunch session. The said request was accepted. However, in the post-lunch session the counsel for the petitioners made a request before the Court for taking up the matter for cross-examination. He was informed that the cross-examination stood completed whereas, the petitioners' lawyer never cross-examined the said witness. PW Bikramjit Singh in the meanwhile, left the Court premises.

An application under Section 311 Cr.P.C. was moved immediately on 07.07.2014 itself. The matter was adjourned for 08.07.2014. Reply thereto was filed stating that no request for deferring the case after lunch, was ever made on behalf of the petitioners.

Learned trial Court dismissed the application under Section 311 Cr.P.C. on 10.07.2014 (Annexure-P7). It is

observed therein that no request was made on behalf of the petitioners and the power of attorney of the lawyer filing the application was not on the judicial file.

The revision preferred by the petitioners impugning the order dated 10.07.2014 has also been dismissed by the learned Additional Sessions Judge, Ludhiana vide order dated 21.10.2014 primarily on the ground that revision petition is not maintainable in this case and as the case pertains to the year 1998, no interference is called for.

Learned counsel for the petitioners contends that impugned orders are liable to be set aside as grave injustice shall be rendered to the petitioners in case vital and important witness like PW Bikramjit Singh, the Investigating Officer of the case is not permitted to be cross-examined on behalf of the petitioners. The counsel moving the application namely Mr. Raman Kaushal has been defending the petitioners since the beginning of trial. The application was moved on 07.07.2014 itself. No prejudice shall be caused to the prosecution in case one opportunity is granted to cross-examine PW, Bikramjit Singh.

Learned counsel for the State opposes this petition and submits that due opportunity has been afforded to the

petitioners. The matter was repeatedly adjourned by the trial Court. Advocate for one of the accused had cross-examined the said witness and there is no necessity of cross-examination by the other accused. The matter is a fairly old one and would only lead to delay in the prosecution/progress of the trial if this application is allowed.

I have heard learned counsel for the parties.

It is apparent that application was moved by the petitioners on 07.07.2014 itself when the facts as narrated above came to light. Undoubtedly, PW Bikramjit Singh is a material and important witness being the Investigating Officer of the case. The matter being an old one pertaining to the year 1998 by itself cannot be a valid and sufficient ground to dismiss the application of the petitioners in the absence of any malafide on the part of the petitioners. Furthermore, the prosecution itself moved an application under Section 311, Cr.P.C. on 07.07.2014, Annexure P-4, for summoning a witness, which was allowed. Therefore, it cannot be said that the petitioners are trying to delay the proceedings/ progress of the case. Grave injustice shall indeed be caused to the petitioners if they are not given one opportunity to cross-examine the said witness.

Accordingly, the impugned orders dated

21.10.2014 and 07.07.2014 are set aside, it is directed that one effective opportunity be afforded to the petitioners to cross-examine PW Bikramjit Singh, the Investigating Officer, in this case. It is made clear that no further opportunity shall be afforded to the petitioners.

Petition is disposed of as above.

13.01.2015.
Anoop

(LISA GILL)
JUDGE