

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

**Crl. Misc. No. 29068 of 2015 in/and
Criminal Revision No. 1262 of 2015(O&M)**

Date of decision: September 08, 2015

Anchi @ Hans Raj

----Petitioner(s)

V/s

State of Haryana

-----Respondent(s)

CORAM:- HON'BLE MR. JUSTICE HARI PAL VERMA

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

Present:- Mr. Mukesh Rao, Advocate for the applicant-petitioner.

Mr. Manish Bansal, Deputy Advocate General, Haryana.

HARI PAL VERMA, J. (Oral)

Crl. Misc. No. 29068 of 2015

Prayer made in the application for placing on record the additional facts and documents as Annexure P-7 to P-9(colly.).

Application is allowed. The additional facts and documents is ordered to be taken on record as Annexure P-7 to P-9(colly.).

Criminal Revision No. 1262 of 2015

Petitioner, namely, Anchi @ Hans Raj has filed the present revision petition impugning the order dated 12.02.2015 passed by the Additional Sessions Judge, Rewari, whereby the application filed by the petitioner under Section 311 Cr.P.C. for recalling the PW-5 Dr. Amit Yadav for cross-examination has been dismissed.

Learned counsel for the petitioner contends that vide application dated 07.01.2015, the applicant-petitioner has requested the learned Presiding Officer that he being behind bar could not engage any counsel to defend him. At the time when witnesses were present for their examination on 07.01.2015, no advocate on behalf of the petitioner was there to defend him. The counsel provided by the legal aid has never met him, therefore, he has no faith in the counsel provided by the Legal Aid Authority. Moreover, he is unaware of the name of such legal aid counsel. In order to engage an advocate, the Court was requested to defer the examination of the witnesses. Learned counsel has further contended that though on 08.01.2015, another application has been filed but the same was only a proforma one only the columns were required to be filled up.

Learned counsel for the petitioner also contends that in the absence of the effective opportunity while not providing counsel to the petitioner of his choice, his fundamental right under Article 21 of the Constitution of India, as well as Section 303 Cr.P.C. are violated. In case the aforesaid PW-5 Dr. Amit Yadav is recalled for

cross-examination, no prejudice is going to be caused to the prosecution.

On the other hand, learned State counsel on instructions from SI-Udayveer Singh, submits that a bare perusal of the examination-in-chief of Dr. Amit Yadav, is absolutely clear as regards the medico-legally opinion in the case and the said witness even if re-summoned for cross-examination, is not going to suggest any new fact. The filing of the present petition is just to delay the trial on the one pretext or the other.

I have heard learned counsel for the parties and have gone through the paperbook.

Though, vide application dated 07.01.2015, the petitioner has not shown any faith in the legal aid counsel and wanted to engage a lawyer of his choice, but even if the legal aid counsel has appeared and has cross-examined the said doctor, no prejudice would be caused to the prosecution in case the petitioner is afforded another opportunity to cross-examine the said doctor.

However, it is made clear that petitioner shall be given only one more opportunity to cross-examine PW-5 Dr. Amit Yadav and no further opportunity would be granted to him. The aforesaid opportunity will however be subject to the cost of ₹10,000/- to be deposited with the Legal Services Authority, Rewari and deposit of cost would be a pre-condition for recalling the said witness for cross-examination.

The trial Court shall give *dasti* summons to the petitioner for onwards service to the PW-5 Dr. Amit Yadav and the cross-examination of the said doctor at the risk and cost of the petitioner.

The present petition is disposed of, accordingly.

September 08, 2015
Anjal

(HARI PAL VERMA)
JUDGE