

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

CRR No.2837 of 2015 (O&M)

Date of Decision: 18.08.2015

Gurmeet Singh and others

...Petitioners

Versus

State of Punjab and another

...Respondents

CORAM: HON'BLE MR.JUSTICE R.P. NAGRATH

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

Present: Ms. G.K. Mann, Advocate
for the petitioners.

...

R.P. Nagrath, J.

CRM No.26224 of 2015

The documents have been filed in deference to the order dated 06.08.2015. These documents Annexure P-2 and the interim orders Annexure P-1 (colly) are taken on record.

Application stands disposed of.

CRR No.2837 of 2015

I have heard learned counsel for the petitioners at considerable length and perused the paper book.

2. The instant revision has been filed for seeking to set aside the order passed by the appellate Court on 03.07.2015.

3. The petitioners faced trial of the charges under Sections 452, 379, 427, 411, 506, 148, 149 IPC Police Station, Ajnala. The

challan was filed before the trial Court on 20.07.2006 and that resulted in the acquittal of the petitioners on 24.10.2013 by the Sub Divisional Judicial Magistrate, Ajnala. One of the reasons that led to the acquittal of the petitioners was that PW3 and PW9 the complainant and eye-witness, respectively did not appear for their cross-examination and, therefore, their statements could not be read into evidence.

4. The complainant/victim filed appeal before the Sessions Court. It was contended that chief examination of the complainant and Jaswinder Kaur was already recorded but the trial Court closed the evidence without completing cross-examination of these witnesses.

5. The learned appellate Court observed that proper opportunity was not provided to the prosecution to lead evidence. It was further observed that the record does not suggest that complainant and eye-witness were not interested to give evidence rather they appeared in the Court and their examination in chief was recorded and cross-examination was deferred on the request of defence counsel. This resulted in the setting aside of the judgement passed by the trial Court and the case was remitted to the trial Court for fresh decision after giving the prosecution reasonable opportunity to produce complainant and the eye-witness to the occurrence for the purpose of their cross examination and then to decide the matter afresh.

6. The learned counsel for the petitioners vehemently

contended that the petitioners faced agony of trial for about seven years during which the trial Court granted innumerable adjournments even indicating last opportunity but no effort was made to produce the witnesses. It was further submitted that cross-examination of the complainant and eye-witness was deferred but they did not appear later on and so there was no alternative for the trial Court but to close evidence.

7. I am not convinced with this argument of learned counsel. The case arose out of First Information Report (FIR) recorded with police and the State was represented by Assistant Public Prosecutor. In the given circumstances, complainant would not have any role in the issuance of process to the witnesses. It was basically for the Public Prosecutor to see whether the summons/process to witnesses were being sent or for the trial Court at least to issue coercive process for securing presence of the witnesses if they do not turn up despite either being bound down or served.

8. When this matter was listed before this Court on 06.08.2015, it was directed that petitioners would file copy of the order passed by the trial Court closing prosecution evidence, copy of the process/summons issued to Sarabjit Singh complainant and Jaswinder Kaur from time to time and copies of all the interim orders passed by the trial Court

9. The learned appellate Court referred to the interim order dated 21.03.2012 passed by the trial Court and noticed that PW4 SI Vishwamittar and Sarabjit Singh complainant were present but they

could not be examined as one of the accused was not present. These witnesses were bound down for the next date. On the next date, chief examination of PW4 SI Vishwamittar and PW3 Sarabjit Singh was recorded but their cross-examination was deferred at the request of defence counsel. On 01.11.2012 again Sarabjit Singh complainant came present but was not examined and bound down for 21.11.2012. On 21.11.2012 Jaswinder Kaur was present and her examination in chief was recorded and cross-examination was deferred at the request of defence counsel. If that be the position showing that the witnesses could not be cross-examined on account of request made by defence counsel, I am of the view that it does not lie in the mouth of petitioners to contend that the evidence could be validly closed on subsequent dates without issuing fresh process to the witnesses.

10. It would be quite important to notice that the order dated 21.11.2012 (Annexure P-3) would show that Jaswinder Kaur PW9 was present and examined-in-chief and her cross-examination was deferred for 06.12.2012 on the request of defence counsel. On 06.12.2012 Inspector Keemti Lal was present and examined. No other PW was present and remaining were ordered to be summoned. The non-appearance of PW3 whose chief examination was recorded on 21.11.2012 has not been reflected in the order dated 06.12.2012 nor the learned trial Court proceeded to issue coercive process i.e. bailable warrants etc. in case the witness did not appear despite being bound down. On 13.12.2012 an

application was filed by prosecution under section 311 Cr.P.C. which was adjourned for 22.12.2012 for hearing and for summoning other witnesses and then to 02.01.2013. Order dated 02.01.2013 does not reflect anything about the receipt of summons of witnesses or the presence of any witness on that day except adjourning the case for hearing on the application under Section 311 Cr.P.C.

11. On 10.01.2013 application under Section 311 Cr.P.C. was decided and the matter was posted to 25.01.2013 for rest of the evidence of prosecution. The order dated 25.01.2013 Annexure P-2 passed by the trial Court reads as under: –

“No PW is present despite this being last opportunity. The charge was framed in the present case on 10.01.2007. The prosecution has already availed 14 effective opportunities and 15 last opportunities. The prosecution remained fail to lead and conclude its entire evidence. Learned APP for the State request for adjournment. There is no justification to adjourn the case again and again for the same purpose. Hence, evidence of the prosecution is closed by order. Now to come up on 06.02.2013 for recording statement of accused U/S 313 Cr.P.C.”

12. There is no indication in the order as to whether the summons of the witnesses whose cross-examination was deferred were even thereafter issued. Unless the trial Court carefully scrutinizes the record with regard to issuance of process, it is not

possible to accept the contention that sufficient opportunities were granted to lead evidence. Most important is the fact that after chief examination of the witnesses was recorded, cross-examination was deferred on the request of the defence counsel. The petitioners have not placed on record copy of the summons/bailable warrants issued to these witnesses when they failed to appear despite being bound down.

13. The petitioners were asked to place on record copy of summons/process issued to these witnesses from time to time but the compliance has not been made. So in the absence of filing such a record it should be presumed that after the witnesses recorded chief examination they were not issued any summons nor any coercive step was taken to secure their presence. The complainant and eye-witness in the circumstances cannot be at fault.

14. The appellate Court has rightly exercised the discretion to undo the injustice or prejudice to the victim in setting the process right by granting opportunity to call these witnesses for their cross-examination. There is a limited scope of interference in revisional jurisdiction of this Court and unless it is shown that there is glaring defect, some palpable error committed by the Court below that intervention of this Court is required.

15. No merit in the instant petition.

16. Dismissed.

18.08.2015
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(R.P. Nagrath)
Judge