

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

**CRR No.3964 of 2014 (O&M)
Decided on: February 09, 2015.**

Manjit Singh

.... Petitioner

Versus

State of Punjab

.... Respondent

CORAM: HON'BLE MR. JUSTICE M.M.S. BEDI

Present: Mr. Bikramjit Aroura, Advocate,
for the petitioner.

Mr. Mikhail Kad, Addl. A.G., Punjab.

M.M.S. BEDI, J (ORAL)

Petitioner is an accused in a case FIR No. 182 dated 01.08.2010, under Sections 307, 342, 336, 427, 506, 148, 149, 302 IPC and 25/27 of Arms Act registered at Police Station City Taran Taran.

The said FIR was registered at the instance of complainant Kabal Singh alleging that on 01.08.2010 at 12:00 P.M when he was going to his land on his tractor along with Jasbir Singh, they were attacked by Gurnam Singh, Jagjit Singh, Sarabjit Singh, Harpreet Singh, Gurmeet Singh, Jatinder Singh, Dilbagh Singh, Nishan Singh and Ranjit Singh, who were armed with fire arms. Gurnam Singh had allegedly fired from his gun at Jasbir Singh, as a result of which Jasbir Singh fell on the ground. Jatinder Singh fired a shot hitting the left hand of the complainant. Other accused also inflicted injuries with their respective weapons.

Kabal Singh complainant was examined as PW-1 whereas Sukhbir Singh was examined as PW-2 after petitioner along with two others were challaned by the police.

As the petitioner-accused had been playing hide and seek with the Court and was making an attempt to delay the proceedings, the Court was compelled to order that cross-examination of complainant on behalf of petitioner would be treated as 'NIL'. Similarly evasive approach was adopted by the petitioner and his counsel appearing for the accused as such cross-examination of Sukhbir Singh as PW-2 was also treated as 'NIL' on 30.04.2012.

The petitioner approached this Court by filing a Criminal Revision No.2013 of 2012. The said revision petition was disposed of by this Court with liberty to the petitioner to file an application under Section 311 Cr.P.C for re-summoning the said witnesses for cross-examination by showing the trial Court that the examination of said witnesses was essential for the just decision of the case or serious prejudice would be caused to the petitioner by not allowing his application under Section 311 Cr.P.C.

The petitioner moved an application under Section 311 Cr.P.C by mentioning that cross-examination of prosecution witnesses is necessary for proper adjudication of the case. The trial Court has dismissed the application under Section 311 Cr.P.C casually by observing as follows:-

“ The Hon'ble Punjab and Haryana High Court has given specific direction to applicant that it will be open to the petitioner to file an application under Section 311 Cr.P.C for summoning the PW indicating the actual prejudice having been caused to him. But in the present applications, the applicants have not indicated any actual prejudice having caused to them. As such, keeping in view of the facts and circumstance of present case and the act and conduct of the

accused/applicants who were intentionally not cross examined PW-1 Kabal Singh and PW2 Sukhbir Singh, no ground is made to allow the applications under reference and the same are ordered to be declined.”

Perusal of the above said reasoning given by the learned trial Court shows that the petitioner has not indicated any actual prejudice having been caused to him on account of denial of right of cross-examination.

I am gone through the statement of PW1 Kabal Singh and PW2 Sukhbir Singh, who have in their statements as eye witnesses deposed that petitioner along with other accused had waylaid the complainant on 01.08.2010 and killed Jasbir Singh. It is the basic ingredient of a fair trial that accused should be given a fair opportunity to cross-examine the witnesses. Denial of this right in a murder case to an accused is apparently denial of justice and cause of serious prejudice to the accused facing trial. During course of arguments, it has been informed that a supplementary challan under Section 173 (8) Cr.P.C had also been filed by the police on 14.04.2012 declaring, on the basis of further investigation, the accused other than the petitioner, as not involved in the case. On the basis of cross-version, the other party has been found to be accused and a report under Section 173(2) Cr.P.C has been filed in cross-version.

Be the case as it may be, fate remains that the petitioner is an accused. Eye witnesses PW-1 and PW-2 are against him. He had, as per the observations of the Court been playing hide and seek in connivance with his counsel to delay the proceedings. The legal provision for meeting such an eventuality is enshrined in Section 309 Cr.P.C where it has been provided that cost of adjournment can be imposed in appropriate cases on the prosecution or the accused. Reference can be made to Explanation 2 of

Section 309 Cr.P.C in this regard.

In view of above said circumstances the impugned order declining to allow the application under Section 311 Cr.P.C, dated 02.11.2014 as well as the order dated 30.04.2012 denying the right of cross-examination by mentioning the opportunity given 'NIL' deserve to be set aside.

The petition is disposed of with a direction that the trial Court shall permit the cross-examination and re-summoning of PW-1 and PW-2 by the petitioner for a date convenient to the Court. The petitioner will pay a cost of Rs. 10,000/- to each of the witnesses for delaying the proceedings for a period of three years. The petitioner will deposit a sum of Rs.20,000/- with the trial Court upon which PW-1 and PW-2 will be re-summoned for a date convenient to the trial Court to enable the petitioner to cross-examine them.

Nothing said in this order will be deemed to be expression of opinion on the report under Section 173 (8) Cr.P.C which is stated to be pending consideration before the trial Court.

(M.M.S. BEDI)
JUDGE

February 09, 2015

harsha