

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

CRM No.M-35886 of 2016 (O&M)

Date of decision : 17.10.2016

Davinder Singh @ Seepa & Anr.

... Petitioners

versus

State of Punjab

... Respondent

CORAM:- HON'BLE MRS. JUSTICE ANITA CHAUDHRY

Present: Ms. Harpreet Kaur, Advocate
for the petitioners.

ANITA CHAUDHRY , J(ORAL)

The petitioners have assailed the order dated 03.02.2016 vide which the trial Court closed the right of cross-examination upon two witnesses.

The petitioners were asked to place on record the zimni order. The zimni orders have been perused. A perusal of the record reveals that the police had challaned Davinder Singh. Subsequently Veera Kaur was summoned as an additional accused, charge was framed again on 19.09.2015. The private witnesses were present for their statement on 23.12.2015 but since the Presiding Officer was on leave, the file was taken up by another officer and the witnesses were bound down for 03.02.2016.

On 03.02.2016 an application for adjournment was moved by the proxy counsel who had put in appearance on behalf of the accused, for reasons as reflected in Annexure P-1, i.e. the defence counsel was not available that day. The trial Court recorded the examination-in-chief of the two main witnesses and cross-examination was recorded as nil.

Counsel for the petitioners urges that they may be given only one opportunity to cross-examine the witnesses and they would abide by any condition. The counsel further states that the evidence of the prosecution is still going on and the case is fixed for 26.10.2016.

The right of cross-examination had been denied to the petitioners. The Court could have adjourned the case for one date. Even after eight months, the prosecution has not completed its evidence. Absence of a counsel is though not a ground for adjournment and the accused should have made an alternative arrangement, but I feel it justifiable that one opportunity is granted but on payment of Rs. 2500/- for each of the witnesses sought to be recalled that is, Ghaggar Singh and Bika Singh.

The trial Court would fix a date for the cross-examination of these two witnesses on total payment of Rs.5000/- and it would be a condition precedent and the costs would be paid to the witnesses before their statements commence. The trial Court would fix a date convenient to it and summon these two witnesses and give only one opportunity to the petitioners for cross-examination. The petitioners would ensure the presence of their counsel.

The petition is allowed on the above terms.

October 17, 2016
M.Negi

(ANITA CHAUDHRY)
JUDGE

Whether speaking/reasoned : Yes

Whether reportable : No