

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

**Crl. Rev. No.905 of 2012 (O&M)
Date of decision : 03.06.2016**

Harpreet @ Preet

.....Petitioner(s)

Versus

State of Haryana

...Respondent(s)

CORAM: HON'BLE MRS. JUSTICE ANITA CHAUDHRY

Present: Mr. Karanyog Singh Riar, Advocate for
Mr. Aalok Sagar, Advocate
for the petitioner.

Mr. S.K. Yadav, DAG, Haryana.

ANITA CHAUDHRY, J.

This revision is directed against the order dated 17.03.2012, vide which the Additional Sessions Judge dismissed the application filed by the accused under Section 311 Cr.P.C.

The present petitioner along with 18 other persons is facing trial in FIR No.225 dated 19.09.2008 registered under Sections 376/511, 148, 323, 325, 307 and 506 IPC read with Section 149 IPC at Police Station Sadar, Sirsa.

The prosecution had closed its evidence on 13.03.2012 and the statement of the accused had been recorded on two dates i.e. 14.03.2012 and 15.03.2012. Thereafter, an application was moved by applicant Harpreet Singh @ Preet for recalling PWs Jaswant Singh, Charanjit and Simarjit Kaur for cross-examination.

A complaint of attempt of rape was made against Dara Singh accused. The victim's father Jaswant Singh called Charanjit Singh to his house and told him about the incident and that they wanted to report this incident to the Panchayat. Charanjit Singh along with Jaswant Singh and some others were going to the house of Roor Singh, Panch. When they were crossing the house of Dara Singh, they found 18 – 20 persons sitting in Dara Singh's house. Charanjit and Jaswant stopped to lodge a protest when Dara Singh started hurling abuses. Both the complainant and Charanjit went towards Roor Singh's house. When they were near his house, Dara Singh along with his accomplices raised lalkara and came forward calling out that they would teach Charanjit a lesson for supporting Jaswant Singh. Dara was armed with a wooden log and injuries were inflicted upon Charanjit. The role of the other accused is given in the FIR. The police arrested the accused and filed the challan.

The statement of the witnesses were recorded at different dates. When the trial was at the stage of defence evidence and arguments, the accused moved an application that the accused was not given an opportunity to cross-examine PW1, PW2 and PW10 and the lapse had caused great injustice and a valuable right had been denied to him and the witnesses be summoned again and he be allowed to cross-examine them.

The trial Court dismissed the application and noted that the witnesses had been examined on 08.10.2010 and 13.12.2011 and on these dates the cross-examination was conducted on the witnesses by the counsel for the aforementioned accused and the application had been moved when the evidence of the prosecution had been closed and the statement under Section 313 Cr.P.C. had been recorded. It was observed that the power

under Section 311 Cr.P.C. could not be exercised to harass a witness in a rape case and resultantly dismissed the application and posted the case for defence evidence on 21.03.2012.

This revision was preferred on 23.03.2012 of which notice was given. On 09.11.2012 since it was stated that certain important questions were left out, the petitioner was asked to place on record the questions which he wanted to ask the witnesses. Time was sought and the case was adjourned to 07.12.2012. It was then urged that all the evidence had concluded and the case was fixed for final arguments and if the stay was not granted then the application would become infructuous. Passing of the final judgment was stayed. The case was adjourned on seven dates and in October, 2013 it was made clear that no further adjournment shall be granted nor any written request would be entertained. Despite that order, repeated adjournments were sought on behalf of the petitioner, some time to make submission on the question of law, on some occasions there was no appearance on behalf of the petitioner; on one date, they wanted to place on record the statement of witnesses. On 31.05.2016 again a request was made. It was urged that the matter may be taken up the next day as the counsel was not available. Last opportunity was granted and arguments were addressed on 01.06.2016. Till 01.06.2016 the petitioner had not placed the document sought for in November, 2012.

The submission made on behalf of the petitioner was that the statement of the witnesses was recorded but proper opportunity of cross-examination was not afforded to all the accused and therefore, they may be summoned for further cross-examination. It was urged that some important questions could not be put to them and it would be in the interest of justice

that they may be given one opportunity to cross-examine the witnesses.

Since there was a contradiction in what the trial Court had said the counsel for the petitioner was asked to place the zimni orders to show that their counsel was not present on the day the statement of the witnesses had been recorded. The counsel had left to get the statements but in the after-noon when the matter was taken up again, it was stated that they could not get the zimni orders. Those were not filed even till today.

The counsel for the petitioner had submitted that the powers under Section 311 Cr.P.C. are wide and if the permission is not accorded, it would result in failure of justice and some important questions were left to be put to the witnesses regarding the identity of the petitioner as at some places the name of the petitioner is mentioned as Pritpal Singh, Harprit & Preet and Charanjit Singh PW stated that he did not know Pritpal Singh, Harpreet and Preet Singh personally. Reliance was placed upon ***Rajiv Sood Vs. State of Punjab 2016(1) RCR (Crl.) 67, Rajinder Singh Chadha Vs. Union Territory, Chandigarh in CRR-2490 of 2015 D/d. 18.08.2015, Krishan Kumar Goel Vs. Sheetal Riceland Limited and Ors. 2015(3) RCR (Crl.) 408, Godrej Pacific Tech. Ltd. Vs. Computer Joint India Ltd. 2008(11) SCC 108, Mannan Sk. and others Vs. State of West Bengal and another 2014 AIR (SC) 2950, Iddar & Ors. Vs. Aabida 2007(11) SCC 211, P. Sanjeeva Rao Vs. State of A.P. 2012 AIR (SC) 2242, Jagjit Singh Vs. State of Punjab and another 2012(2) RCR (Crl.) 632, Balwinder Singh Vs. State of Punjab and others 2010(1) RCR (Crl.) 909.***

The State counsel had submitted that the incident pertains to 2008 and the challan was presented in 2009 and all the accused did not engaged separate counsel and the witnesses were jointly or individually

cross-examined and the trial Court had noted from the record that the counsel representing this petitioner was present and had cross-examined the witnesses and it was only an attempt to delay the trial and the witnesses cannot be summoned again.

The whole arguments of the petitioner appear to be farcical and falls apart in the light of what has been pleaded in para no.6 of the petition. A reading of it makes it clear that the attempt to re-summon the witnesses is not because some questions were left out or that there was no cross-examination by the petitioner. It is necessary to refer to para no.6 of the revision petition and it reads as under:-

“6. That it is also pertinent to mention here that at this stage the compromise has been effected between accused and the complainant, injured and prosecutrix as accused as well as the complainant party belongs to the same very village and a quashing petition bearing CRM-M 8245 of 2012 was filed for quashing of the FIR on the basis of compromise. However, that quashing petition was dismissed as withdrawn with order dated 21.03.2012.”

There is an admission by the petitioner that there was a compromise and they had also filed a quashing petition on the basis of compromise and that petition had been dismissed as withdrawn. The attempt to recall and re-summon the witnesses was to enable the witnesses to again step into the witness box and retract from their statements. False reasons have been given during the proceeding in this Court at different point of time and that is the reason that the petitioner failed to place the questions on record. The petitioner had taken contrary stand before the Court below and the stand taken here. Before the lower Court, it was stated that they were not given the right of cross-examination which was rejected as they had cross-

be put to the witnesses. The petition is nothing but an abuse of the process of the Court. The trial has been held up for three years. The petitioner was not putting forth his submissions and took more than two dozen adjournments.

The lawyer's duty towards his client has to be balanced. They owe a duty to the Court and to the administration of justice. The lawyer who filed the petition and represented the petitioner till the last hearing had mislead the Court. The legal practitioner's duty to promote his client's interest must never transcend his duty to promote the interest of justice and truth. He also has a paramount duty towards the Court. His duty is to uphold the interest of justice and it should be of absolute condour.

The petition is dismissed with costs of Rs.10,000/- to be deposited with the High Court Legal Services Committee within a month.

Copy of this order be sent to the Court below and the High Court Legal Services Authority.

03.06.2016

Sunil

(ANITA CHAUDHRY)
JUDGE