

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M No.28537 of 2017
Decided on: 22.09.2017

Ravinder Singh

....Petitioner

Versus

State of Punjab

....Respondent

CORAM: HON'BLE MR JUSTICE ARVIND SINGH SANGWAN

Present : Mr. Naveen Sharma, Advocate
for Mr. Arjun Veer Sharma, Advocate
for the petitioner.

Mr. Randeep S. Khaira, AAG, Punjab.

ARVIND SINGH SANGWAN, J. (Oral)

While issuing notice of motion, the following order was
passed on 04.08.2017:-

“This petition has been filed under Section 482 Cr.P.C. seeking quashing of the orders dated 02.03.2017 and 17.03.2017 vide which cross-examination of the prosecution witnesses has been ordered to be treated as NIL as well as the order dated 19.05.2017 passed on the application of the petitioner filed under Section 311 Cr.P.C. for re-calling PW – Balbir Singh son of Hari Singh and PW – ASI Amar Singh and allowing the petitioner/accused to cross-examine these witnesses.

It is submitted on behalf of the petitioner that the aforesaid two prosecution witnesses were present in the Court on 24.10.2011 and were partly cross-examined and their further cross-examination was deferred as they were bound down for 23.07.2012. However, later on after a considerable long time, these two witnesses never appeared before the trial Court and the trial Court was using coercive method for securing their presence. It is

further submitted that both the aforesaid witnesses were present in the Court on 02.03.2017 but could not be cross-examined, therefore, their cross-examination was treated as NIL. Thereafter, the petitioner filed an application under Section 311 Cr.P.C. for re-calling the prosecution witnesses, namely, PW – Balbir Singh and PW – ASI Amar Singh, which was dismissed by the trial Court vide order dated 19.05.2017. It is further submitted that by not granting permission to cross-examine the witnesses, a prejudice would be caused to the petitioners who have a right to cross-examine all the prosecution witnesses and put the defence to them.

Notice of motion for 22.09.2017.

Mr. K.S. Sidhu, DAG, Punjab accepts notice on behalf of the respondent – State.

Counsel for the petitioner is directed to supply a copy of paperbook to counsel opposite during course of the day.”

Reply by way of an affidavit of Jaswinder Singh, Deputy Superintendent of Police, Dakha, District Ludhiana (Rural) on behalf of respondent No.1 filed in the Court is taken on record, in which the factual position is not disputed. However, it is submitted that despite providing adequate opportunity, the petitioner did not complete the cross-examination of PW5 and the application filed by the petitioner under Section 311 of the Code of Criminal Procedure (in short 'Cr.P.C.') for recalling PW5 – ASI Amar Singh as well as PW – Balbir Singh has also been dismissed vide order dated 19.05.2017.

After hearing counsel for the parties, I am of the view that the impugned order dated 02.03.2017 and 17.03.2017 are liable to be set-aside as it has come in the earlier interim orders passed by the trial

Court that while recording the prosecution evidence, the trial Court was trying to procure the presence of the prosecution witnesses by adopting coercive methods i.e. by issuingailable warrants as they were not appearing despite service, therefore, it cannot be held that the delay in conclusion of trial is wholly attributable to the petitioner/accused.

A perusal of the order dated 07.10.2014 further show that despite service PW – Amar Singh did not appear in the Court and theailable warrants were issued against him. Similarly, on the another date, on request of PW – Surjit Singh, his appearance was exempted. On 05.12.2014, again despite service, two PWs i.e. Balwinder Singh and Surjit Singh failed to appear and againailable warrants were issued for procuring their presence. A perusal of the orders further show that on few occasions, even the Presiding Officer of the trial Court was on leave and the case was adjourned and sometimes, the case was transferred from one Court to another Court. Again on one date i.e. 01.09.2015, the case was adjourned due to local holiday and again on one occasion, the Presiding Officer was on Ex-India leave.

It appears that the case was transferred to different Courts on more than two occasions and on various dates, the witnesses despite service were not present and, therefore, the trial Court was not justified in holding that the cross-examination of PW5 – ASI Amar Singh be treated as NIL and further declining to summon PW – Balbir Singh and PW – ASI Amar Singh for recalling them for the purpose of further cross-examination.

The right to cross-examination is an important right given to the accused to put up his defence to all the prosecution witnesses in

order to prove his innocence and the same cannot be denied to an accused person even if on one or two dates due to non-availability of counsel for the accused, the cross-examination could not be completed. Accordingly, the petition is allowed and the impugned orders are set-aside. The application filed by the petitioner under Section 311 Cr.P.C. is allowed and the petitioner is permitted to cross-examine 03 PWs i.e. Surjit Singh, Balbir Singh and ASI Amar Singh. However, it is made clear that the trial Court will grant only one effective opportunity to the petitioner for cross-examination after all the aforesaid 03 witnesses are duly served and are present in the Court.

Disposed of.

(ARVIND SINGH SANGWAN)
JUDGE

22.09.2017
yakub

Whether speaking/reasoned	Yes/No
Whether reportable:	Yes/No