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

CRM-M-47007 of 2017

Date of decision: December 08, 2017

Dharampal and another

.....Petitioners

Versus

State of Haryana

.....Respondent

CORAM: HON'BLE MR. JUSTICE A.B. CHAUDHARI

Present: Mr. Manish Soni, Advocate for the petitioners.

A.B. CHAUDHARI, J (Oral)

Notice of motion.

At the asking of the Court, Ms. Tanushree Gupta, DAG
Haryana accepts notice on behalf of the State.

The petitioners who are in custody in case FIR No.487/2015,
under Sections 148, 149, 302, 201, 435, 365, 120-B of Indian Penal Code,
1860, registered at Police Station Sadar Palwal have put to challenge the
order dated 02.12.2017 made by the learned Additional Sessions Judge-I,
Palwal by which the learned trial judge declined to defer the cross-
examination to some other date on the ground that the counsel who was to
cross-examine the witness was not present since he had not come from his
District Gurugram and the counsel present was unable to cross-examine the
witness and did not as such cross-examine the witness.

According to the learned counsel for the petitioners, witness-
Dr. Promod Raikwar is an important witness and rather the material witness
who is required to be cross-examined by the counsel of the choice of the
petitioners. He, then contended that earlier on 2-3 occasions, doctor was

summoned to appear after his examination-in-chief was deferred on 28.04.2016 for want of property but then the doctor had not appeared and that is why the counsel who was to cross-examine the doctor also failed to appear on 02.12.2017.

Learned counsel for the petitioners could not point out the specific details about the dates on which the Dr. Promod Raikwar is said to have been absent after his examination-in-chief in part was recorded on 28.04.2016 and therefore, the submission will have to be rejected outright.

This Court has been repeatedly making orders asking the trial Court not to defer the cross-examination as ordained by the Apex Court in various judgments and therefore, this Court does not find any fault with the impugned order declining to adjourn the proceedings for cross-examination by a particular counsel.

I however, find that Dr. Promod Raikwar was the person who conducted postmortem and appeared before the trial Court for proving the postmortem in respect of bullet injury etc. Admittedly, doctor was not cross-examined even by the Advocate who was present. The petitioners are in jail as under trial. In my view, Dr. Promod Raikwar should not be allowed to go without cross-examination as there is right in the petitioners to cross-examine the said material witness. The trial Court has observed that even otherwise it was of no use and would be a futile exercise as Dr. Anuj Chaudhary was already examined as PW3. In the wake of the fact that Dr. Promod Raikwar was the doctor who conducted postmortem, I think inference drawn by the learned trial Judge for no need to cross-examine Dr. Promod Raikwar would not be correct. After all it is for the defence to cross-examine the witness in its own way and defence should not be

forbidden from doing so. Undoubtedly, the counsel for the petitioners ought to have remained present and to say casually that he had not come and therefore, the proceedings should be adjourned must be deprecated. Then the interest of justice will have to be seen and therefore, I think by awarding compensatory costs to the State of Haryana, a chance should be given to the petitioners to cross-examine the said witness. In that view of the matter, following order is passed:-

ORDER

- (i) Rule is made absolute in part;
- (ii) Impugned order dated 02.12.2017 (Annexure P-4) is set aside;
- (iii) The trial Court shall first ascertain the date convenient to Dr. Promod Raikwar telephonically and thereafter, fix the date for his cross-examination as per his convenience and shall record the cross-examine on that date;
- (iv) In no case, the proceedings shall be adjourned after appearance of Dr. Promod Raikwar in the Court and the case shall be taken up;
- (v) The petitioners shall pay non-refundable compensatory costs in the sum of ₹10,000/- to the State of Haryana by depositing the same, as a pre-condition, with the trial Court;
- (vi) The petitioners shall carry the *dasti* order and reach the same before the trial Court on or before 14.12.2017.

(A.B. CHAUDHARI)
JUDGE

December 08, 2017

mahavir

Whether speaking/ reasoned: Yes/No

Whether Reportable: Yes/No