

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM No. M-7405-2017(O&M)

Date of decision: 24.03.2017

Vipin Prashar and others

..... Petitioners.

Versus

State of Haryana and another

..... Respondents.

CORAM: HON'BLE MRS. JUSTICE LISA GILL

Present: Mr. Subhash Ahuja, Advocate for the petitioners.

Mr. Sanjay K. Saini, AAG, Haryana.

LISA GILL, J.

Dasti notice issued to respondent No. 2 has been duly served.

None appears on behalf of respondent No. 2 despite service.

Petitioners seek quashing of order dated 16.02.2017 whereby their application under Section 311 Cr.P.C. for recalling PW-5 Smt. Aarti Sharma-the complainant in FIR No. 07 dated 07.01.2011 registered under Sections 498-A/406/506 IPC at Police Station Old Faridabad and PW-4 Arun Sharma, the brother of the complainant has been dismissed. It is submitted that the petitioners are not at fault for non-examination of the said witnesses on the dates fixed. It is due to difficulty of the counsel who firstly had to proceed to attend last rites of his relative/friend on 17.12.2016 that PW-4 could not be cross-examined. Thereafter, PW-5 could not be cross-examined on 21.01.2017 as the petitioners' counsel was suffering from extreme high blood pressure and had returned to home. The petitioners therefore should not be made to suffer on this account. They are not guilty of any kind of negligence in this respect. In case cross-examination of the

above said witnesses is not permitted, manifest injustice shall be caused to the petitioners who are the accused in the above said FIR. It is further submitted that the petitioners undertake to cross-examine the said witnesses if one single opportunity be granted to them. It is further undertaken that the petitioners would not try to delay the trial in any manner whatsoever.

Learned counsel for the State has opposed this petition while submitting that the petitioners are merely trying to delay the trial on one pretext or other. Hence, this petition be dismissed.

The Hon'ble Supreme Court in *P Sanjeeva Rao V/s. State of Andhra Pradesh* 2012 (3) RCR Cri 653 has held that it is preferable to err in favour of the accused rather than protecting the prosecution against a possible prejudice at his cost.

It is not in dispute that PW-5 Smt. Aarti Sharma is the complainant in this case and PW-4 Arun Sharma is her brother. They are material witnesses and their non-examination would lead to denial of a fair opportunity to the accused to defend themselves.

Thus, keeping in view the facts and circumstances of this case, it is considered just and expedient to afford one opportunity to the petitioners to cross-examine PW-5 Smt. Aarti Sharma, the complainant and PW-4 Arun Sharma, the complainant's brother.

Consequently while setting aside order dated 16.02.2017, this petition is disposed of with a direction to the learned trial Court to afford one opportunity to the petitioners to cross-examine PW-5 and PW-4 subject to payment of Rs.25,000/- as costs to be paid to the complainant. It is made clear that if on the date fixed by the learned trial Court, the said witnesses

are not examined, no further opportunity shall be afforded to the petitioners

irrespective of any explanation set forth by them.

March 24, 2017
Divyanshi

(LISA GILL)
JUDGE

Whether speaking/reasoned : *Yes/No.*

Whether reportable : *Yes/No.*