

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

(1)

**Crl. Revision No. 336 of 2016 (O&M)
Date of Decision: July 18, 2017.**

Krishan Lal

.....PETITIONER(s).

VERSUS

Central Bureau of Investigation

.....RESPONDENT(s).

(2)

Crl. Revision No. 367 of 2016 (O&M)

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.....PETITIONER(s).

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CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. S.K. Garg Narwana, Senior Advocate with
Mr. Naveen Gupta, Advocate
for the petitioner (s).

Mr. Sumeet Goel, Advocate
Retainer counsel for respondent-CBI with
Mr. S.S. Yadav, DAL, CBI.

SURINDER GUPTA, J.(Oral)

CRR-336-2016

This is revision petition filed by Krishan Lal challenging the order dated 13.10.2016 passed by Special Judge (CBI), Haryana at Panchkula whereby his application seeking permission to examine four witnesses, was declined.

2. Vide his application dated 02.01.2016, the petitioner sought permission to examine the following additional defence witnesses:-

- “(i) Sh. Khairati Lal son of Sh. Munshi Ram.
- (ii) Sh. Amarjit Singh son of Sh. Gamdoor Singh.
- (iii) Purshotam Lal son of Sh. Pyare Lal.
- (vi) Labh Singh son of Jeewan Singh.”

3. Learned counsel for the petitioner submits that the main issue in the trial is the visit of Ranjit Singh to Dera Sacha Sauda, Sirsa on 16.06.2002. The petitioner by examining DWs namely Kharaiti Lal, Amarjit Singh and Purshotam Lal wants to prove that Ranjit Singh did not visit the Dera on 16.06.2002. Learned Special Judge (CBI) declined the application only on the ground that the petitioner had not earlier opted to examine these witnesses. The application was filed at the fag end of the trial and petitioner had failed to establish relevance of these witnesses. As per the prosecution case, Ranjit Singh was murdered on 10.07.2002 and the allegation against the petitioner is that he had conspired to murder Ranjit Singh. The petitioner had taken a specific defence that he never hatched conspiracy to eliminate Ranjit Singh. By examining Kharaiti Lal, Amarjit Singh and Purshotam Lal, petitioner wants to negate the alleged visit of Ranjit Singh at Dera Sacha Sauda at Sirsa on 16.06.2002. Co-accused Gurmeet Ram Rahim Singh has already examined witnesses to negate the factum of aforesaid visit of Ranjit Singh at Dera Sacha Sauda, Sirsa on 16.06.2002 and his meeting with accused Gurmeet Ram Rahim Singh at Dera Sacha Sauda, Sirsa. The above evidence was produced by Gurmeet Ram Rahim Singh to prove his plea of alibi. The petitioner wants to examine aforesaid three additional witnesses to prove that Ranjit Singh did not visit Dera Sacha Sauda, Sirsa on 16.06.2002, as such, the question of hatching conspiracy by petitioner does not arise. The production of defence

evidence and fair trial is fundamental right of the accused and learned trial Court without looking into relevance of the defence witnesses, dismissed the application on the ground of delay despite undertaking by the petitioner that he will not delay the trial and will produce all the witnesses on the same day. Regarding the fourth witness namely Labh Singh, learned counsel for the petitioner argues that he is relevant witness to state that three pellets of bullets, which were allegedly recovered from the body of Ranjit Singh, were not sealed, as recorded in his statement under Section 161 Cr.P.C. by CBI.

4. Learned counsel for the respondent-CBI argues that the motive of petitioner is apparently to delay the trial. Earlier, he had moved an application to examine the defence witnesses but never called these witnesses. In defence, number of witnesses have been examined to prove that neither Gurmeet Ram Rahim Singh was in Dera on 16.06.2017 nor Ranjit Singh visited Dera Sacha Sauda, Sirsa on that day. The allegation against the petitioner pertains to hatching of conspiracy to eliminate Ranjit Singh. After the conclusion of prosecution evidence, case was fixed for defence evidence. It is evident from perusal of the order passed by the trial Court that the petitioner filed application wherein he did not mention the name of the witnesses now sought to be examined despite the fact that these witnesses were available to him and he was very well aware about his defence. Other co-accused have already examined a number of witnesses on this point, as such, the application filed by the petitioner was rightly declined by the trial Court on the ground that it is an attempt to delay the trial.

5. To prove the factum of conspiracy to commit an offence, prosecution has to rely on circumstantial evidence as direct evidence on this

point is seldom available. In this case, the prosecution has tried to prove on record that deceased Ranjit Singh visited Dera Sacha Sauda, Sirsa on 16.06.2002. Co-accused Gurmeet Ram Rahim Singh has examined witnesses to prove his plea of alibi. The petitioner, in order to rebut the prosecution case, intends to bring on record the fact that deceased Ranjit Singh had not visited Dera Sacha Sauda, Sirsa on 16.06.2002 on which date, he allegedly met Sant Gurmeet Ram Rahim Singh. I find that the element of delay in moving the application is certainly there but the question which arise for consideration is as to whether the accused can be debarred from leading his defence evidence only on the ground of delay. Every accused has right of fair trial and to defend himself is a part of his humanitarian as well as fundamental right as enshrined in Article 21 of Constitution of India. As per provisions of Section 243(2) of Code of Criminal Procedure, the application moved by the accused to examine the defence witnesses can be declined on the ground, that was made for purpose of vexation or delay or defeating ends of justice. Learned trial Court declined the application filed by the petitioner mainly on three following grounds:-

- (i) That the petitioner had not cited the name of these persons when he moved his first application on 31.01.2015.
- (ii) Petitioner has not been able to establish as to how examination of these witnesses is necessary with regard to factum of visit of Ranjit Singh to Dera Sacha Sauda, Sirsa on 16.06.2002.
- (iii) The petitioner also wants to examine summoned witness to prove the record which has already been proved on file.

6. On giving a careful thought to the above reasons recorded by learned trial Court while declining the application, I find that same are not sound or tenable in the eyes of law. Firstly, because the delay cannot be the

sole ground to decline the application to examine defence witnesses; secondly the petitioner has described the relevance of these witnesses in his application, as follows:-

- “(a) Sh. Khairati Lal son of Sh. Munshi Ram, resident of 573/12 State Bank Colony, Kaithal, who will depose about the alleged visit of Ranjit Singh in Dera Sacha Sauda, Sirsa on 16.06.2002.
- (b) Sh. Amarjit Singh son of Sh. Gamdoor Singh resident of Shah Satnam Ji Nagar, Sirsa, who will depose about the alleged visit of Ranjit Singh in Dera Sacha Sauda, Sirsa on 16.06.2002.
- (c) Purshotam Lal son of Sh. Pyare Lal resident of Shah Satnam Ji Nagar, who will state about the alleged visit of Ranjit Singh at Sirsa and their meeting on 16.06.2002.”

and thirdly, learned trial Court has nowhere stated that reasoning given by the petitioner in his application, describing relevance of witnesses, is either not correct or tenable.

7. Apex Court in case of ***T. Nagappa Vs. Y.R. Murlidhar (2008)*** 5 ***Supreme Court Cases*** 633, while discussing the right of the accused to lead defence, has observed as follows:-

“8. An accused has a right to fair trial. He has a right to defend himself as a part of his human as also fundamental right as enshrined under Article 21 of the Constitution of India. The right to defend oneself and for that purpose to adduce evidence is recognized by the Parliament in terms of sub-section (2) of Section 243 of the Code of Criminal Procedure, which reads as under :

"Section 243 - Evidence for defence.# (1) #

(2) If the accused, after he had entered upon his defence, applies to the Magistrate to issue

any process for compelling the attendance of any witness for the purpose of examination or cross-examination, or the production of any document or other thing, the Magistrate shall issue such process unless he considers that such application should be refused on the ground that it is made for the purpose of vexation or delay or for defeating the ends of justice and such ground shall be recorded by him in writing:

Provided that, when the accused has cross-examined or had the opportunity of cross-examining any witness before entering on his defence, the attendance of such witness shall not be compelled under this section, unless the Magistrate is satisfied that it is necessary for the ends of justice."

9. What should be the nature of evidence is not a matter which should be left only to the discretion of the Court. It is the accused who knows how to prove his defence. It is true that the court being the master of the proceedings must determine as to whether the application filed by the accused in terms of sub-section (2) of Section 243 of the Code is bona fide or not or whether thereby he intends to bring on record a relevant material. But ordinarily an accused should be allowed to approach the court for obtaining its assistance with regard to summoning of witnesses etc. If permitted to do so, steps therefor, however, must be taken within a limited time. There cannot be any doubt whatsoever that the accused should not be allowed to unnecessarily protracting the trial or summon witnesses whose evidence would not be at all relevant."

And Another (2009) 14 SCC 677, Apex Court has observed that an accused is entitled to a fair trial which is a part of his fundamental right as guaranteed under Article 21 of the Constitution of India. The concept, however, cannot be put to a straight jacket formula and no hard and fast rule can be laid down therefor.

9. So far as the prosecution plea that attempt of the petitioner is only to delay the trial, the same has been met by learned counsel for the petitioner while submitting that petitioner will produce witnesses, if allowed to be examined, on one date at his own responsibility and he will not seek adjournment on this score.

10. In view of the above discussion, I find that the petitioner should be permitted to examine witness(es) about visit of Ranjit Singh at Dera Sacha Sauda, Sirsa on 16.06.2002. However, keeping n view that all three witnesses sought to be examined on this point namely Kharaiti Lal, Amarjit Singh and Purshotam Lal are repetitive, I am of the considered opinion that instead of permitting the petitioner to examine any specific witness, it will be in the interest of justice to leave the option with the petitioner to examine any three out of four witnesses sought to be examined by him. Permission so allowed to him will not delay the disposal of the case in view of submission of counsel for the petitioner.

11. As a sequel of my above discussion, this petition is partly allowed. Order dated 13.01.2016 passed by Special Judge (CBI), Haryana at Panchkula is set aside to the extent that the Court will grant one opportunity to the petitioner-accused to examine three out of four witnesses namely Kharaiti Lal, Amarjit Singh, Purshotam Lal and Labh Singh. In

view of submission of learned counsel for the petitioner, the petitioner-accused will not seek any assistance of summoning of these witnesses and issuance of any process by the Court. He will produce the witnesses on the date fixed by the trial Court at his own responsibility and on failure to do so, the trial Court will close the evidence and will not grant any further adjournment.

12. As the case is quite old and the FIR was registered in the year 2003, the trial Court is directed to decide the same within a period of three months from the date of receipt of this order by giving short adjournments.

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13. This is revision against the order dated 13.01.2016, whereby oral evidence of the petitioner was ordered to be closed.

14. Grievance of the petitioner is only to the extent of examining the witnesses mentioned in the application dated 02.01.2016, which was subject matter of revision petitioner i.e. CRR No.336 of 2016.

15. Learned counsel for the petitioner submits that on decision of above-mentioned revision petition, this revision petition shall be rendered infructuous.

16. As the revision petition pertaining to application dated 02.01.2016 (CRR No.336 of 2016) has been decided, this petition is disposed of as infructuous.

July 18, 2017
Sachin M.

(SURINDER GUPTA)
JUDGE

Whether speaking/reasoned: ✓ ***Yes/No***

Whether Reportable: ✓ ***Yes/No***