

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

CRL. REV. No.986 OF 2017 (O&M)
DATE OF DECISION : 28th MARCH, 2017

K. C. Padhi

.... Petitioner

Versus

State through Central Bureau of Investigation (CBI).

.... Respondent

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

* * * *

Present : Mr. Shashi Shanker, Advocate for the petitioner.

Mr. R. K. Handa, Advocate for the respondent.

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A. B. CHAUDHARI, J. (ORAL)

The present revision petition is directed against the order dated 15.12.2016 by which the learned Special Judge CBI dismissed the application dated 08.12.2016 for recalling the witness Sh. S. L. Gupta, SSP (Retired), CBI for effective cross-examination. At the outset this Court finds that the revision petition against the impugned order would not be maintainable since the impugned order is an interlocutory order. However, in the interest of justice this Court permits the petitioner to convert the above revision in to the petition under Section 482 Cr.P.C.. Accordingly the petitioner shall carry out the necessary corrections and amendments.

The petition is allowed to be converted in the Criminal Miscellaneous Petition.

By application dated 08.12.2016 the petitioner in his application gave the following reasons for recalling the said witnesses Sh. S. L. Gupta. Instead of repeating those I quote the same hereunder:

2. That the aforesaid witness Sh. S.L. Gupta, being the I.O. of the case is prime witness of the case. It is submitted that there are various other co-accused in the present case and all of them were to cross examine the said witness.
3. That for the aforesaid reason the said witness was required to come to this Hon'ble Court on various occasions.
4. That lastly, the matter was fixed for cross examination of Sh. S. L. Gupta on 10.11.2016, however preceding to the said date, the applicant/accused came to the impression that two dates i.e. 10.11.2016 and 11.11.2016 have been given for cross examination of the said witness Sh. S. L. Gupta.
5. That it is pertinent to mention here that Sh. Ravinder Pandit Advocate who is representing various co-accused in the instant case was cross examining the witness for the last two dates and on enquiry from the said counsel, he informed that he may take the entire day for cross examining the I.O. of the case on 10.11.2016.
6. That in the aforesaid circumstances the main counsel of the applicant preferred to reach Chandigarh in the evening of 10.11.2016 so as

to cross examine the I.O./Witness on 11.11.2016.

7. That accordingly, he booked the ticket having PNR No.2124596690 in train No.12005 from New Delhi to Chandigarh on 10.11.2016 and also took returning ticket in Train No.12012 having PNR No.2224596753 on 11.11.2016 from Chandigarh to New Delhi.

The copies of the tickets dated 10.11.2016 & 11.11.2016 are being placed on record.

8. That it is further pertinent to mention here that the accused/applicant reached Chandigarh and appeared before this Hon'ble Court on 10.11.2016 and came to know that there was no date of 11.11.2016 fixed for cross examination of the I.O./witness and it was only 10.11.2016.
9. That on the other hand the aforesaid counsel Sh. Ravinder Pandit also completed cross examination qua his clients/co-accused on 10.11.2016 and therefore, this Hon'ble Court pleased to ask the applicant/accused to cross examine the I.O./witness as no further date/opportunity could have been given for cross examination of the said I.O./witness.

10. That it is submitted that it is the main counsel of the applicant who had done preparation for cross examination of the I.O./witness and was also carrying various documents and photographs along with him for effective cross examination of the I.O./witness Sh. S. L. Gupta.
11. That the applicant/accused therefore, requested the said Sh. Ravinder Pandit, Advocate to ask few questions and though few questions were asked by the said Sh. Ravinder Pandit Advocate, on behalf of the present accused/applicant also but the I.O. could not be cross examined effectively as admittedly, he was not well versed/acquainted with the case of present applicant/accused.
12. That it is pertinent to mention here that the main counsel of the applicant/accused has been contesting the present case on behalf of the accused/applicant since beginning and has been appearing for the applicant/accused regularly but he could not appear before this Hon'ble Court on the last date of hearing i.e. on 10.11.2016 in the aforesaid circumstances and the tickets purchased by the said counsel speaks about the volumes of the truth and thus,

non-appearance of the main counsel for the applicant/accused is neither deliberate nor intentional in nature. It is submitted that when the applicant informed his counsel that there was no date on 11.11.2016, he got the returning ticket cancelled but the ticket for Chandigarh on 10.11.2016 could not be even cancelled.

13. That on the other hand the I.O. Sh. S. L. Gupta is the main witness and his cross examination is required to be done effectively in order to meet the ends of justice.”

In support of the petition learned counsel for the petitioner vehemently argued that the petitioner would be put to great injustice if the application in question is not allowed. According to him the reasons quoted above given in the application were good enough to allow the petitioner’s counsel who had prepared the case to cross-examine the aforesaid witness. The petitioner could not cross-examine. The petitioner was present in person and the other Advocate who was though holding the power for the petitioner was not authorized to conduct the cross-examination nor was he fully aware about the points on which the cross-examination of the witness was required to be made. As stated in the application, it was the counsel for the petitioner who was to cross-examine the witness and he had studied the brief earlier but could not appear before the Court on the particular date for the reasons beyond his control as mentioned in the application.

According to him no prejudice could be caused to the prosecution because the witness S. L. Gupta is the investigating officer and main witness and to allow him to go without cross-examination by the petitioner's authorized counsel, would result into serious injustice to the petitioner. There is no likelihood of turning hostile to the prosecution. The petitioner is ready to pay suitable costs for the goof up but then the petitioner should not be punished and a chance should be given to cross-examine the witness through his authorized Advocate.

Per contra, learned counsel for the CBI supported the above order and vehemently opposed the petition and contended that the trial is pending for the last so many years and due to such obstructions the trial is not being completed. He, therefore, prayed for dismissal of the petition.

I have heard learned counsel for the parties at length. With the assistance of the learned counsel for the parties I have gone through the entire evidence of Mr. S. L. Gupta and particularly with reference to the cross-examination made for the petitioner by counsel Mr. Ravinder Pandit. It is not in dispute that since the counsel for the petitioner was absent for the reasons stated in the application the learned Judge asked the petitioner to cross-examine the witness though through Sh. Ravinder Pandit and that was accordingly. But the counsel who was fully prepared and was authorized by the petitioner to act as cross-examiner for him, was not present and that is why prayer for adjournment was made which was not accepted. Be that as it may, in this context I do not find any fault with the order of the trial Court.

However upon perusal of the cross-examination as pointed out to me by learned counsel for the petitioner, I find that there is every likelihood of the petitioner being prejudiced because there is no proper cross-examination of the investigating officer of the CBI in such a serious case of rape. The allegations are against high ranking officer. That hardly makes any difference but then looking at the cross-examination for the petitioner, I think the petitioner should be allowed to cross-examine the witness through advocate of his choice subject to the payment of some costs. After all Sh. S. L. Gupta is a witness who can not be tampered as he is the chief investigating officer in the case and therefore no prejudice can be caused to the prosecution.

In the result, I make the following order:

ORDER

- (i) CRL. REV. No.986 OF 2017 is allowed.
- (ii) The impugned order is set aside.
- (iii) The petitioner is allowed opportunity to cross-examine by way of last chance to cross-examine the witness Sh. S. L. Gupta, subject to payment of costs of ₹5,000/- to the CBI as a pre-condition.

Disposed of accordingly.

28th March, 2017
‘raj’

(A. B. CHAUDHARI)
JUDGE