

IN THE PUNJAB & HARYANA HIGH COURT AT CHANDIGARH

CRM-M-10319-2018

Date of decision : 13.03.2018

Anita Bala

... Petitioner

Versus

State of Punjab and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

Present: Mr.Maninderjit Singh Bedi, Advocate
for the petitioner.

AMOL RATTAN SINGH, J.(ORAL)

By this petition, the petitioner challenges the orders passed by the learned trial Court (JMIC, Jalandhar), dated 24.07.2017, dismissing an application filed under Section 154 of the Indian Evidence Act read with Section 311 Cr.P.C., by which application permission was sought to recall a witness already summoned upon an application earlier filed under Section 311 Cr.P.C.; the second application having been moved for the purpose of his cross-examination by the prosecution/complainant, on the ground that the witness had turned hostile and therefore the prosecution/complainant had a right to cross-examine him, and that the witness being 85 years of age had not understood the 'purport of the questions' put to him.

The order of the learned trial Court shows that after the said witness (one Sh.Jaswant Singh Ahluwalia) had been summoned on an application filed by the complainant under Section 311 Cr.P.C., several opportunities were granted to the complainant in the prosecution, between

cross-examined by the counsel for the accused.

Despite opportunity available to counsel for the complainant & prosecution on that date, they did not seek to cross-examine their witness. Consequently holding that the application had been filed only to delay proceedings, it was dismissed by the trial Court.

The aforesaid order having been challenged by way of a revision petition before the learned Additional Sessions Judge, Jalandhar, a very detailed order has been passed by that Court on 18.11.2017, firstly reiterating what the trial Court had held and thereafter observing that the charges were framed against the accused on 21.02.2011, i.e. about 7 years earlier, with 35 “exclusive opportunities” granted to the prosecution and the complainant to conclude their entire evidence, with the trial Court even then having allowed the application filed under Section 311 Cr.P.C. to examine the aforesaid witness, Jaswant Singh Ahluwalia.

It was further noticed by that Court that adjournments had been sought on various occasions mainly by the prosecution, which resulted in a delay of more than 7 years in concluding the trial and that the application under Section 154 read with Section 311 Cr.P.C., was filed on the date that the statement of the accused under Section 313 Cr.P.C. was to be recorded, thereby leading to still further delay.

Hence, in view of all the aforesaid circumstances, the revision petition was also dismissed.

Learned counsel for the petitioner submits that the right of cross-examination not having been given to the complainants' counsel after the petitioner had turned hostile during cross-examination, it amounts to travesty of justice.

Having considered the aforesaid argument also, it is seen that in his examination-in-chief (a copy of which is Annexure P-1 with the present petition), conducted on 14.06.2017, the witness stated “ As per our opinion after the meeting, the accused party was at fault. We advised them to rehabilitate the complainant. A written compromise was effected, attested copy of same is Ex.PW6/A”.

Thereafter, in his cross-examination conducted on 21.07.2017, he stated that he did not know who the complainant was in the present case.

In the aforesaid circumstances, I do not see what benefit would be drawn by the complainant even if the aforesaid witness was ordered to be recalled for cross-examination by counsel for the complainant, it being admitted that he was 85 years old, having given almost contradictory statements going to root of his testimony itself, obviously showing that he was a witness not fully aware of things at his age.

Moreover, the complainant and prosecution not having sought to cross-examine him on that date itself, in the circumstances of delay given by both learned Courts below, I see no cause to reverse the impugned orders.

Consequently, the trial already having been delayed for a long time, therefore, for the reasons already given by the learned revisional Court in the impugned order, I do not see any ground to entertain this petition, which is dismissed in limine.

(AMOL RATTAN SINGH)
JUDGE

March 13, 2018.

Davinder Kumar