

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

**CRM No.M-16429 of 2018 (O&M)
Date of Decision: September 25, 2018**

Bharat

...Petitioner

VERSUS

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.L.S.Sekhon, Advocate for
Mr.Jagmohan Ghumman, Advocate
for the petitioner.

Mr.B.S.Virk, DAG, Haryana
for the respondent-State.

INDERJIT SINGH, J.

Petitioner has filed this petition under Section 482 Cr.P.C. for quashing of order dated 26.03.2018 passed by learned Addl. Sessions Judge, Gurugram and its consequential proceedings, vide which, five prosecution witnesses have been re-called and de novo trial has been started after hearing the arguments.

Notice of motion was issued. Learned State counsel appeared and contested the petition.

I have heard learned counsel for the petitioner as well as learned State counsel and have gone through the record.

From the record, I find that learned trial Court summoned PW-4

mortem report Ex.P13 but inadvertently, he has not been recalled for cross-examination. The Court below felt that he being material prosecution witness, is required to be examined for further examination-in-chief as well as for cross-examination. Learned counsel for the petitioner did not object to the recalling of PW-4 Dr.Deepak Mathur. Otherwise also, the doctor is a material witness for the just decision of the case. Therefore, no illegality has been committed by learned trial court while summoning PW-4 Dr.Deepak Mathur for his further examination-in-chief and cross-examination. The impugned order qua recalling PW-4 Dr.Deepak Mathur is, therefore, upheld.

Learned trial Court also summoned complainant Shyam, who has stated his daughter-victim as Siya whereas Siya is his younger daughter and victim is elder daughter namely Muskan. The Court observed that above clarification is required to be incorporated by recalling PW-3 Shyam. Learned trial Court further observed in the impugned order that photographs of the spot showing dead body of the victim after exhumation are also required to be put to him as the process of exhumation was carried out in his presence and he happens to be the complainant as well as father of the victim. He was also recalled for further examination-in-chief. It is next observed that PW-6 Bhupinder, is cousin of the complainant, who identified the dead body at the time of inquest proceedings and admitted his statement and signatures. He stated that he identified the dead body at Civil Hospital. Therefore, learned trial Court recalled him to clarify his stand. The Court below further held that seven photographs have been placed on the file, which are of dead body and place of its exhumation but PW-17 SI

Satyadev has given clarification that photographer was not called by him.

PW-10 ASI Dharambir was also recalled. The Court further held that PW-17 SI Satyadev has stated that he called Tehsildar and FSL Crime Team Incharge Dr.Jyoti Singh to the spot as dead body was to be exhumed. During cross-examination at one stage, he has gone stating that ACP, DCP, SHO, Dr.Jyoti Singh and Tehsildar were present at the spot but he did not record their statements and at another stage, he stated that aforesaid officers reached on the spot after the recovery of the dead body. He has not clarified in his entire evidence which amongst above named officers reached prior to exhumation as he himself has gone calling the Tehsildar and Dr.Jyoti Singh for carrying out the process of exhumation. It is also observed that FIR is tendered in evidence and copies of the same were sent to the senior police officers and those copies are required to be looked into to see whether the FIR is ante-dated or not. Learned trial Court, in view of the above, summoned these witnesses suo moto.

Learned counsel for the petitioner has placed on record statement of PW-3 Shyam. The Court asked him 15 questions including such type of questions; after how much time of your marriage Abhishek was born and what was your age as well as the age of your wife Pinki at the time of your marriage; in which class Abhishek and Prince are now studying; where were your children when you dropped your wife Pinki to her parental home on her last visit; after how much time you informed the missing report of your daughter Muskan; were you present when dead body of your daughter Muskan was dug out, but it is nowhere in the order that witness is required for court questioning and whatever court questions have been asked, are not mentioned in the order that the Court wants to clarify on these

Similarly, statement of PW-6 Bhupinder has been recorded but no question was put to him by the Court and it looks that he was examined by the Public Prosecutor and Public Prosecutor got declared him hostile, which cannot be done to the Court witness. These PWs have been summoned by the Court for getting some clarifications. Again, PW-10 ASI Dharambir was recalled for further examination-in-chief, who stated that he has taken the photographs from his personal mobile and these photographs were got exhibited by the Court, simply on this statement. It is settled law that Court is not supposed to fill up the lacuna. Further, it is also settled law that Court is not to collect the evidence for any of the parties. If any discrepancies or lacunas were pointed out by the defence counsel, the Court cannot recall the witnesses to fill up that lacuna. It looks that learned trial Court examined the witnesses, specially, the complainant and asked him fifteen questions. Similarly, to PW-17 SI Satyadev, the Court has asked questions in full paragraphs. If at the time of recording the evidence, the Court finds that there are some contradictions in the version of the witnesses and the Court wants clarification, the Court can ask the question to get the fact clarified. Even, there is no restraint on powers of the Court under Section 311 Cr.P.C. for summoning of the witnesses but the Court cannot examine the witness already examined in such a manner from which it can be presumed that the Court is collecting the evidence for the prosecution.

In view of the above discussion, I find that impugned order dated 26.03.2018 passed by learned Addl. Sessions Judge, Gurugram, summoning witnesses i.e. complainant, Investigating Officer etc., except PW-4 Dr. Deepak Mathur, is not as per law and the same is set aside and the

impugned order is upheld only qua recalling of PW-4 Dr. Deepak Mathur.

Resultantly, present petition stands partly allowed, accordingly.

September 25, 2018
Vgulati

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No