

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

Criminal Misc. No.M- 2751 of 2018(O&M)

Date of Decision: January 30 , 2018.

Sunil Kumar and another

..... PETITIONER (s)

Versus

State of Haryana

..... RESPONDENT (s)

CORAM:- HON'BLE MRS.JUSTICE LISA GILL

Present: Mr. Ravi Sharma, Advocate and
Mr. S.K.Liberhan, Advocate
for the petitioners.

Mr. Anmol Malik, AAG, Haryana.

Mr. Vikrant Pamboo, Advocate
for the complainant.

LISA GILL, J.

Petitioners assail order dated 29.11.2017 passed by the learned Additional Sessions Judge, Ambala whereby the cross-examination of PW13 the complainant-Rajinder Singh and PW1 Jaswinder Singh has been treated as nil, despite opportunity.

The petitioners are accused in FIR No.25 dated 22.05.2016, under Sections 304B/34 IPC, Police Station Naggal. It is noticed that petitioner No.1 – Sunil Kumar has filed CRM No.M-40273 of 2017 seeking the concession of bail pending trial in the aforesaid FIR. It was directed vide order dated 02.11.2017

by this Court in the abovesaid petition that the learned trial court should ensure the examination of the complainant in this case. Examination-in-chief of the complainant was conducted on 29.11.2017. It was completed at 12.00 noon. It is noted in the impugned order dated 29.11.2017 that the counsel for the petitioners left the court after examination-in-chief of the complainant. The matter was taken up in the post-lunch session, but the main arguing counsel for the petitioners was not present for conducting the cross-examination. A request for adjournment was addressed on the ground that the arguing counsel for the petitioners was unwell. The learned trial court while observing that a specific direction was issued by this Court to ensure the examination of the complainant, refused to adjourn the matter. The cross-examination of the witness was treated as nil.

Learned counsel for the petitioners submits that the main arguing counsel for the petitioners Mr. Anil Kaushik, Advocate was unwell on 29.11.2017, therefore he could not appear on that day. His associates made a request for adjournment. It is submitted that in any case due to any fault on the part of their counsel, the petitioners should not be penalized. They would suffer irreparable loss and manifest injustice, if they are not permitted an opportunity to cross-examine PW13 and PW1. Learned counsel relies upon the judgment of the Hon'ble Supreme Court in **P. Sanjeeva Rao Vs. State of A.P., 2012 (7) SCC 56.**

Learned counsel for the complainant has opposed this petition while submitting that the petitioners only seek to delay the proceedings.

I have heard learned counsel for the parties and have gone through the file.

It is relevant to note that petitioner No.1-Sunil Kumar has withdrawn CRM No.M-40273 of 2017 filed by him seeking bail pending trial. The petitioners seek to cross-examine the complainant Rajinder Singh (PW13) and PW1 Jaswinder Singh. It cannot be denied that both the said witnesses are relevant material witnesses and denial of cross-examination by the defence would necessarily lead to prejudice to the petitioners. In the case of P. Sanjeeva Rao (Supra), the Hon'ble Supreme Court has observed that looking to the consequences of denial of opportunity to cross-examine the witness it is preferable to err in favour of the appellant.

In the facts and circumstances of the case, it is considered just and expedient to dispose of this petition with a direction to the learned trial court to allow one opportunity to the petitioners to cross-examine PW13 the complainant-Rajinder Singh and PW1 Jaswinder Singh subject to payment of ₹10,000/- as costs, to be deposited with the Haryana Legal Services Authority.

(LISA GILL)
JUDGE

January 30 , 2018.
'om'

Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No