

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

- (1) **Criminal Misc. No.M-31591 of 2018 (O&M)**
(2) **Criminal Misc. No.M-31586 of 2018 (O&M)**

Date of Decision: August 08, 2018

Raj Kapoor @ Pritam

.....PETITIONER(s).

VERSUS

State of Haryana

...RESPONDENT(s).

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. GPS Bal, Advocate
for the petitioner (s).

Mr. Deepak Grewal, D.A.G. Haryana.

SURINDER GUPTA, J.

Petitioner seeks quashing of order dated 23.07.2018 passed by the trial Court, in case bearing FIR No.429 and 430 both dated 19.11.2014 registered at Police Station Barwala, District Hisar whereby summoning of defence witnesses as mentioned in list of defence witnesses was not allowed after recording statements of 14 witnesses.

As orders passed in both petitions are similar, facts are taken from petition No. CRM-M-31591-2018. Perusal of this paper book shows that after the conclusion of prosecution evidence and recording statement of accused-petitioner, under Section 313 Cr.P.C., the case was fixed for defence evidence. The petitioner submitted a list of 59 witnesses out of which 14 were examined. Learned trial Court vide detailed order dated

09.07.2018 declined the request of petitioner to summon the remaining witnesses. However, he was allowed one more adjournment to produce entire defence evidence. Order dated 09.07.2018 reads as follows:-

“Accused have already availed sufficient opportunities to conclude their defence evidence. However, they want to examine some more witnesses by brining them at their own responsibility. List of witnesses which the accused want to examine in defence has been scrutinized by me.

The witnesses which were deemed proper for the defence of accused have been summoned by this court whereas counsel for the accused could not satisfy me any relevancy or the purpose for which remaining defence witnesses have been cited for summoning by the Court. It appears that the names mentioned in the list to be examined as defence witnesses has been supplied in the court to prolong the matter. Lengthy list of the witnesses was found to be supplied on frivolous and vexatious basis not in a bonafide manner but just to protract the trial, therefore, this court does not deem it proper to summon remaining witnesses cited in list to be summoned remaining witnesses mentioned in the list of defence witnesses is rejected. However, in the interest of justice one last opportunity is granted to the accused to produce all their witnesses apart from the one which are mentioned in the list at their own responsibility on 16.7.18, failing which their defence evidence would be closed by court order.”

On the next date, no DW was present and one more opportunity was allowed for 23.07.2018. On 11.07.2018, the petitioner moved an application for summoning of all the witnesses, which was declined vide impugned order dated 23.07.2018 and the case was again fixed for defence

evidence.

Learned Trial Court observed that the accused has not explained the purpose for which the remaining 45 out of 59 witnesses are to be summoned. Learned Trial Court found the list of remaining witnesses as frivolous, vexatious, just to delay the trial.

Learned counsel for the petitioner, when confronted with the relevance of the witness sought to be summoned, submits that he will not press for examination of the witnesses mentioned at Sr. No.3 to 13 and 22 to 31 in the list of witnesses. He only presses for examination of the witnesses mentioned at Sr. No.14 to 21 and also Sandeep son of Ram Mehar in CRM-M-31591-2018 and witnesses mentioned at Sr. No.4 to 11 and 29 in CRM-M-31586-2018. When inquired about the purpose, he submits that they are witnesses of the occurrence and will prove the cause of death of Rajni (Sarita in CRM-M-31586-2018) and that she died of heart attack and was not murdered. Learned counsel for the petitioner further submits that he confines his submission only for permission to allow examination of witnesses mentioned at Sr. No.14 to 21 and Sandeep S/o Ram Mehar in CRM-M-31591-2018 and witnesses mentioned at Sr. No.4 to 11 and 29 in CRM-M-31586-2018. The witnesses mentioned at Sr. No.14 to 21 and 4 to 11 as referred above, are the witnesses, who will depose about the entire occurrence and in case they are not permitted to be examined, it will cause an irreparable loss to the petitioner. He has further restricted his submission limiting numbers of witnesses as this Court deems appropriate.

I agree with the contention of the learned counsel for the petitioner that accused has right to examine witnesses in defence whose

statements are relevant and is so permitted by the Court. It appears that the defence in this case has made a mockery by submitting list of 59 witnesses without mentioned the relevance of these witnesses. The accused did not possess indefeasible right to examine the defence witnesses. For each and every witness to be examined in defence, he has to explain their relevance to the Trial Court. The Trial Court has asked the petitioner to disclose relevance of the witnesses but the same was not disclosed. Still keeping in view the submission of learned counsel for the petitioner, the permission is allowed to the petitioner to examine Sandeep S/o Ram Mehar and the witnesses mentioned at Sr. No.15, 17, 19 and 21 in CRM-M-31591-2018 and witnesses mentioned at Sr. No.5, 7, 9, 11 and 29 in CRM-M-31586-2018, in defence. However, these witnesses will be produced before the Trial Court at own responsibility. Learned Trial Court will allow only two opportunities to the petitioner-accused to produce the above-said witnesses and dispose of the cases within a period of three months of receipt of copy of this order.

Both the petitions stand disposed of accordingly.

Copy of this order be conveyed to the trial Court.

August 08, 2018
Sachin M.

(SURINDER GUPTA)
JUDGE

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

Whether Reportable: ***Yes/No***