

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

**CRM-M No. 32344 of 2018
Decided on: 31.7.2018**

Juzar Abbas

.....Petitioner

Versus

State of Haryana

.....Respondent

Coram: HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

Present: Mr. Rakesh Gupta, Advocate, for the petitioner

Rajbir Sehrawat, J.(Oral)

This is a petition filed under Section 482 Cr.P.C. challenging the order dated 12.6.2018 (Annexure P-5) passed by the learned ACJM, Ambala in Criminal Complaint No. 81-in RBT/30.8.2014/24.3.2017 titled as State v. Juzar Abbas in FIR No. 194 dated 15.7.2014 under Sections 406 and 420 IPC, registered at Police Station Parao, Ambala, whereby the witness PW4-Nirmal Singh has been discharged without, allegedly, completing his cross examination.

Learned counsel for the petitioner/accused submits that PW4-Nirmal Singh was examined on 5.6.2018 by way of his examination in chief. On the same day, he was partly cross examined. Thereafter, the case was adjourned to 11.6.2018. However, on that day, this witness could not be further cross examined because an application was moved on behalf of the accused for exemption from personal appearance. Still further, the case was adjourned to 12.6.2018. On that date, again an application was moved by the accused himself for adjournment of the case, on the ground that his counsel was

suffering from pain and he was not able to conduct his case. However, on the same day, the Court has passed the order of discharge of the witness, denying the opportunity of cross examination to the accused. Learned counsel further submits that in this way, the accused has been denied a fair opportunity of defending himself.

Having perused the documents placed on record as well as hearing the arguments of learned counsel for the petitioner, this Court does not find any defect, illegality or impropriety in the order passed by the trial Court as such. These 3 dates are not the only dates when the case has been adjourned at request of the accused. The trial Court has also recorded that earlier also the case has been got adjourned by the accused on one pretext or the other. Even the cost of Rs. 2000/- was imposed upon the accused. The impugned order also records that the cost has not been paid by the accused. Although, learned counsel for the petitioner has submitted that the cost of Rs.2000/-stands paid, however, he has failed to produce any receipt to substantiate his argument.

As observed above, although there is no illegality or impropriety in the order passed by the trial Court as such, however, the justice should not only be done but also seem to have been done on the face of it. Therefore, it would be appropriate to remove any traces of doubt from the mind of the accused that he has not been properly heard or that he has not been given proper opportunity to defend himself. Therefore, keeping in view this aspect only, the petitioner is granted one more opportunity to cross examine PW4 Nirmal Singh. However, this opportunity is granted to the accused subject to his making the payment of cost of Rs.10,000/-, to be deposited with District Legal Services Authority, Ambala. It is further clarified that in case the earlier

imposed cost has not been paid by the accused, as it being claimed by his counsel, then the costs shall stands enhanced to Rs.20,000/-. In that situation the opportunity to cross examine the witness shall be granted to the petitioner only on payment of cost of Rs.20,000/-, to be deposited in the manner mentioned above.

It is further made clear that after granting one effective opportunity on one day to cross examine the aforesaid witness, no further adjournment for this purpose shall be granted by the trial Court.

Disposed of in above said terms.

(RAJBIR SEHRAWAT)
JUDGE

31.7.2018

Ashwani

Reportable/Reasoned : Yes/No
Speaking/Non-speaking : Yes/No