

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-32464 of 2016
Date of Decision: 25.05.2018

Vijay Kumar

...Petitioner

VERSUS

State of Punjab

...Respondent

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. P.S. Ahluwalia, Advocate
for the petitioner.

Mr. A.S. Gill, Sr. DAG, Punjab.

SURINDER GUPTA, J.

This is petition against order dated 22.08.2016 passed by Additional Sessions Judge, Patiala declining application filed by accused-petitioner for recalling PW-5 Anita Gupta, PW-6 Inspector Ramphal and PW-7 Parveen Kumar for their cross-examination.

2. PW-5 Anita Gupta and PW-6 Inspector Ramphal were examined by the Court on 03.06.2016. Mr. Tanuj Sharma, Advocate, who appeared for learned defence counsel on that day, submitted that he has not been instructed by learned defence counsel to cross-examine the witnesses and has only been instructed to remain present at the time of recording of examination-in-chief of witnesses.

3. On 04.06.2016, statement of PW-7 Parveen Kumar was recorded and learned defence counsel again avoided to appear for cross-examination of PW-5 Anita Gupta, PW-6 Inspector Ramphal and PW-7 Parveen Kumar. Learned trial Court adjourned the case for their cross-examination for 01.07.2016.

4. Earlier on 23.06.2016, witnesses i.e. PW-5 Anit Gupta and PW-6 Inspector Ramphal were present but learned defence counsel had not appeared till 4.15 p.m.

5. Again on 01.07.2016, learned defence counsel did not appear to cross-examine the witnesses and one of the accused moved application for grant of adjournment beyond 04.07.2016 as they had filed transfer application before learned Sessions Judge, Patiala in which no interim order staying cross-examination of witnesses had been passed. However, on this application, the case was adjourned for 05.07.2016.

6. On 05.07.2016, accused-Vijay Kumar again requested for adjournment beyond 07.07.2016 and cross-examination of witnesses, who were present in Court, was deferred till 08.07.2016.

7. The prosecution witnesses were again present on 08.07.2016 but learned defence counsel did not put in appearance to cross-examine the witnesses and accused-Vijay Kumar again requested for adjournment beyond the date fixed in transfer application. Request of accused-Vijay Kumar was allowed and case was adjourned for 12.07.2018.

8. On 12.07.2018, witnesses were again present but learned defence counsel as usual did not put in appearance and opportunity to cross-examine them was treated as not availed and witnesses were discharged. Thereafter, accused-Vijay Kumar moved application for recalling of witnesses giving reason that witnesses were not cross-examined as his transfer application was pending for 14.07.2016.

9. The application was dismissed by learned trial Court with the observation that witnesses had appeared on six dates and the accused and his counsel had made mockery of entire justice delivery system by not

cross-examining them. The transfer application moved by accused-Vijay Kumar was also withdrawn.

10. Learned counsel for the petitioner was candidly fair while submitting that he in no manner either defend or support action of learned defence counsel engaged by the petitioner before the trial Court in not cross-examining three witnesses on six consecutive dates and his non-appearance before the trial Court on several dates. He has, however, submitted that witnesses were not cross-examined as transfer application was pending but at the same time conceded that there was no interim order passed by Sessions Judge, Patiala on transfer application staying cross-examination of witnesses. He has argued that petitioner should not be made to suffer for the lapse on the part of his counsel and has relied on observations of Hon'ble Apex Court in case of **P. Sanjeeva Rao vs. State of A.P., 2012 (7) SCC 56.**

11. It is a case where learned defence counsel before the trial Court had tried to defy the Court by deliberately avoiding to cross-examine the witnesses, who had appeared continuously for six dates. He had not even appeared to make request to the Court to adjourn the case for cross-examination of witnesses due to pendency of transfer application. Learned trial Court was generous while accepting request of the accused for adjournment due to pendency of transfer application despite the fact that there was no interim order staying cross-examination of the witnesses. The liberty and honour of witnesses is very important aspect during trial. If a person without any fault on his part had to appear six times in Court and is going unexamined it leaves a very bad impression about functioning of judicial system. Even if transfer application was pending, which was

ultimately withdrawn, learned defence counsel could examine the witnesses. In these circumstances, there was no other option before the trial Court but to close examination and record cross-examination of prosecution witnesses as nil after granting six opportunities to cross-examine them.

12. Learned counsel for the petitioner has not tried to defend action of learned defence counsel and has gone to the extent of submitting that learned defence counsel may be allowed to be called by him to tender his unqualified apology for his conduct in trial Court, but I am of the opinion that no such opportunity is required to be afforded as learned defence counsel was acting under the directions of his client but at the same time his conduct of avoiding appearance in the Court for cross-examination of witnesses cannot be appreciated or is expected from a counsel even if there is direction by client/accused not to cross-examine the witnesses who had appeared in Court. He should have appeared in Court and given reasons for not cross-examining the witnesses.

13. In view of above facts, I am of the opinion that petitioner deserves no leniency but still keeping in view the fact that un-rebutted statements of these three witnesses will go adversely against him and keeping in view the interest of justice, he is allowed one more opportunity to cross-examine three prosecution witnesses subject to payment of ₹20,000/- as costs to be deposited with Mediation and Conciliation Centre of this Court within a period of four weeks from today. On deposit of costs, trial Court will allow one more opportunity to petitioner to cross-examine the witnesses. It is, however, made clear that trial Court will not grant any further adjournment beyond one opportunity given for cross-examination of witnesses even if the learned defence counsel fail to appear in Court for any

reason.

14. Keeping in view the fact that in the present case FIR was recorded in the year 2014, trial Court is directed to expedite trial of the case and dispose of the same at the earliest and preferably within a period of four months from the date of receipt of copy of this order.

May 25, 2018
jk

(SURINDER GUPTA)
JUDGE

Whether speaking/reasoned:	Yes/No
Whether Reportable:	Yes/No