

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

**CRM-M-38347-2015
Date of decision: 16.07.2018**

Parminder Singh and another

...Petitioners

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present:- Mr. P. S. Ahluwalia, Advocate
for the petitioners.

Mr. Joginder Pal Ratra, DAG, Punjab.

Mr. Vijay Rana, Advocate
for the complainant.

ARVIND SINGH SANGWAN, J. (Oral)

Prayer in this petition is for quashing of the orders dated 23.10.2015 (Annexure P-6) and 26.10.2015 (Annexure P-7), passed by the trial Court in case FIR No. 103 dated 04.10.2014, registered under Sections 308, 323, 447, 506 and 149 of the Indian Penal Code at Police Station Haryana, District Hoshiarpur, vide which, the cross-examination of the four prosecution witnesses, i.e. PW3 Iqbal Singh, PW-4 Paramjit Singh, PW-8 ASI Akshpad Gautam and PW-13 Arshdeep Kaur, was treated as nil.

Learned counsel for the petitioners submits that it is a case of version and cross-version and the cross-examination of the complainant, who appeared as PW-3, and the eye-witness Paramjit Sigh, who appeared as PW-4, could not be done as an application under Section 91 Cr.P.C. read with Section 145 of the Indian Evidence Act was moved and the trial Court on 05.03.2015, after noticing this fact, adjourned the case for the

cross-examination of these two witnesses. Learned counsel for the petitioners further submits that thereafter, the said application remained pending and the cross-examination of these witnesses was deferred. It is further submitted that vide order dated 05.06.2015 (Annexure P-4), the said application was allowed and thereafter the case was fixed for cross-examination of these two witnesses, however, the record was not received.

Learned counsel for the petitioners further submits that thereafter, the case was fixed for prosecution evidence and on four dates, preceding the date of passing of the impugned orders, no witness was present as it would reflect in the zimini orders (Annexure P-5 Colly.). Learned counsel for the petitioner further submits that the right to cross-examine the witness is an important right given to an accused person to prove his innocence by putting his defence version to the prosecution witnesses and the petitioners may be granted one opportunity to cross-examine all the aforesaid four witnesses.

Learned State counsel, on instruction from ASI Major Singh, assisted by learned counsel for the complainant, have opposed the prayer of the petitioners on the ground that the petitioners were given sufficient opportunity, however, they have failed to cross-examine these witnesses and on this account, the trial Court has closed the cross-examination of these witnesses.

After hearing learned counsel for the parties, I find merit in the present petition.

A perusal of the order dated 05.06.2015 (Annexure P-4) and the zimini orders (Annexure P-5 Colly.) shows that the trial Court itself has adjourned the case till the decision of the application, filed under Section 91

Cr.P.C. read with Section 145 of the Indian Evidence Act, which was allowed on 05.06.2015, and thereafter the case was again fixed for prosecution evidence and on four dates preceding the impugned orders, no prosecution witness was present.

In view of the above, the present petition is allowed. One effective opportunity is granted to the petitioners/accused to cross-examine these four witnesses. However this will be subject to payment of cost of ₹10,000/- to be deposited with the District Legal Services Authority, concerned.

It is clarified that the effective opportunity will be treated as a date when the prosecution produces all the witnesses and in case any of the witnesses is not present on the date fixed by the trial Court, the trial Court may grant one more opportunity to cross-examine such witness/witnesses.

July 16, 2018

Waseem Ansari

**(ARVIND SINGH SANGWAN)
JUDGE**

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No