

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

**CRM-M-9609-2017**

**Date of decision: March 12, 2018**

**Avtar Singh**

**....Petitioner**

**Versus**

**State of Punjab**

**....Respondent**

**CORAM: HON'BLE MR. JUSTICE RAJ SHEKHAR ATTRI**

Present: Mr. Suveer Sheokand, Advocate  
for the petitioner.

Mr. V.G. Jauhar, Senior DAG, Punjab.

**RAJ SHEKHAR ATTRI, J.(ORAL)**

This is a petition under Section 482 of the Code of Criminal Procedure (for short 'the Code') for quashing of order dated 28.02.2017 passed by learned Judicial Magistrate Ist Class, Ludhiana vide which application under Section 311 of the Code filed by the petitioner for recalling PW-8 Paramjit Singh for cross-examination has been dismissed.

Heard.

While holding the criminal trial, a Judge has to keep in mind the principle of fair trial. To the mind of this court, a fair trial is the heart of the criminal jurisprudence. It is well settled that denial of fair trial is crucifixion of human rights. Equally, this is an integral part of a democratic polity which is governed by Rule of Law, which has been ingrained in the concept of 'due process of law'. While emphasizing the principle of fair trial and the practice of the same in the course of trial, it is obligatory on the part of the courts to see as to whether in an individual case or category of cases, because of non-

compliance of a certain provision or denying a party a right to lead evidence of his choice will amount to denial of justice. Hon'ble Supreme Court in ***Zahira Habibullah Sheikh and another vs. State of Gujarat (SC) 2006 (2) RCR (Crl.) 448*** has made the following observations:-

*“The principles of rule of law and due process are closely linked with human rights protection. Such rights can be protected effectively when a citizen has recourse to the Courts of law. It has to be unmistakably understood that a trial which is primarily aimed at ascertaining the truth has to be fair to all concerned. There can be no analytical, all comprehensive or exhaustive definition of the concept of a fair trial, and it may have to be determined in seemingly infinite variety of actual situations with the ultimate object in mind viz. Whether something that was done or said either before or at the trial deprived the quality of fairness to a degree where a miscarriage of justice has resulted. It will not be correct to say that it is only the accused who must be fairly dealt with. That would be turning a Nelson's eye to the needs of the society at large and the victims or their family members and relatives. Each one has an inbuilt right to be dealt with fairly in a criminal trial. Denial of a fair trial is as much injustice to the accused as is to the victim and the society. Fair trial obviously would mean a trial before an impartial Judge, a fair prosecutor and atmosphere of judicial calm. Fair trial means a trial in which bias or prejudice for or against the accused, the witnesses, or the cause which is being tried is eliminated. If the witnesses get threatened or are forced to give false evidence that also would not result in a fair trial. The failure to hear material witnesses is certainly denial of fair trial.”*

In the instant case, the cross-examination of PW-8 Paramjit Singh was made 'nil' on the ground that opportunity has already been given but no cross-examination. Learned counsel for the

petitioner submitted that in fact the petitioner was called afternoon sessions on 20<sup>th</sup> May, 2016 but at the time of cross-examination of PW-8, learned counsel for the petitioner was not available to substantiate his plea. An affidavit of the counsel has been placed on record.

Keeping in view the circumstances of the case and in the interest of justice, this court is of the considered opinion that an opportunity must be given to the petitioner to cross-examine the witness. Accordingly, the present petition is allowed.

Trial court is directed to afford one opportunity to cross-examine PW-8 Paramjit Singh.

**(RAJ SHEKHAR ATTRI)**  
**JUDGE**

**March 12, 2018**

*m. sharma*

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