

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

I.

**CRM-M-7292-2018 (O&M)
Date of Decision: 5.7.2018**

Pawan Goyal

.....PETITIONER(s).

VERSUS

Dr. Prakash Rastogi

.....RESPONDENT(s).

II.

CRM-M-7381-2018 (O&M)

Pawan Goyal

.....PETITIONER(s).

VERSUS

Dr. Prakash Rastogi

.....RESPONDENT(s).

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

Present: Mr. Johan Kumar, Advocate
for the petitioner.

Ms. Bhanvi Sood, Advocate, for
Mr. Aditya Jain, Advocate,
for the respondent.

RAJ SHEKHAR ATTRI, J.(Oral)

This order shall dispose of the aforesaid two petitions as the
dispute is between the same parties.

The petitioner has challenged order dated 23.1.2018 (Annexure P-3) passed by learned Judicial Magistrate, 1st Class, Faridabad whereby right of cross-examination of the petitioner/accused was struck off.

I have heard the learned counsel for the parties and gone through the record.

While holding the criminal trial, a Judge has to take in mind inter alia the following factors:-

- (a) providing the fair trial;
- (b) the role of the Judge while holding a criminal trial

So far as providing a fair trial is concerned, 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. It is 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 whether in an individual case or category of cases, because of non-compliance of a certain provision, reversion of judgment of conviction is inevitable or it is dependent on arriving at an indubitable conclusion that substantial injustice has in fact occurred. Hon'ble Supreme Court in **Zahira Habibullah Sheikh and another v. 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.”

Exigency of the situation, fair play and good sense should be the safeguard, while exercising the discretion. The court should bear in mind that no party in a trial can be foreclosed from correcting errors and that if proper evidence was not adduced or a relevant material was not brought on record due to any inadvertence, the court should be magnanimous in permitting such mistakes to be rectified.

The court should be conscious of the position that after all the trial is basically for the prisoners and the court should afford an opportunity to them in the fairest manner possible. In that parity of reasoning, it would be safe to err in favour of the accused getting an opportunity rather than protecting the prosecution against possible prejudice at the cost of the accused. The court should bear in mind that improper or capricious exercise of such a discretionary power, may lead to undesirable results.

Fair trial entails the interests of the accused, the victim and of the society. Denial of a fair trial is as much injustice to the accused as is to the victim and the society. Law does not countenance a "mock trial" - It is a serious concern of society.

Right of the accused to cross-examine a witness is a part of the fair trial. Thus, denial to cross-examine certainly amounts to violation of the rights of the accused in this regard.

Learned trial magistrate has observed that on that day, witness was present but counsel for the accused failed to cross-examine the witness, rather he moved an application for adjournment.

The manner in which right of the accused to cross-examine the witness has been curtailed certainly amounts to illegality and infirmity and it violated the rights of the accused.

In view of the above, both the petitions are allowed
However, learned trial Magistrate is directed to summon the witness and

afford one opportunity to the petitioner-accused to cross-examine him in both the cases.

July 5, 2018
Paritosh Kumar

(RAJ SHEKHAR ATTRI)
JUDGE

<i>Whether speaking/reasoned:</i>	<i>Yes/No</i>
<i>Whether Reportable:</i>	<i>Yes/No</i>

