

Crl. Revn. No. 3240 of 2018

(1)

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Crl. Revn. No. 3240 of 2018

DATE OF DECISION:27.09.2018

Yogender Kumar Shakya

.....Petitioner

Versus

Central Bureau of Investigation

.....Respondent

BEFORE:- HON'BLE MRS. JUSTICE DAYA CHAUDHARY

Present:- Mr. J.S. Mehndiratta, Advocate
for the petitioner.

DAYA CHAUDHARY, J.

The present revision petition has been filed for setting aside impugned order dated 18.9.2018 passed by learned Special Judge, CBI, Haryana, whereby, an application filed under Section 311 Cr.P.C. for recalling PW-8 Avinash Dikshit for further cross-examination has been dismissed.

Briefly, the facts of the case as made out in the present petition are that the petitioner was working as Principal of Kendriya Vidyalaya at Airforce Station Sirsa. As per allegations, the petitioner demanded a bribe of ₹10,000/- from the complainant-Om Pal Rathi. On the basis of complaint made by the complainant, a trap was laid and a sum of ₹10,000/- was recovered from the drawer of the table of the petitioner. As per case of the prosecution, the bill were not shown by the complainant to the petitioner,

whereas, as per version of the investigating agency, original bills were handed over by the complainant to Sh. Bhushan Mathur, UDC, KV-I. On completion of investigation by CBI, the final report was submitted before the Court on 19.8.2012. During course of trial, statement of PW-8 Avinash Dikshit, Commissioner of KVA, New Delhi was recorded to prove the sanction order passed against the petitioner. After recording the statements of prosecution witnesses, statement of accused-petitioner under Section 313 Cr.P.C. The defence evidence was closed by the Court order. Thereafter an application was moved under Section 311 Cr.P.C. by the petitioner for recalling of said witness for further cross-examination. Said application was dismissed vide order dated 18.9.2018, which is subject matter of challenge in the present petition.

Learned counsel for the petitioner contends that the petitioner has falsely been implicated in this case, whereas, he was not involved. The FIR in dispute was registered with revengeful attitude. The application for recalling has been dismissed without considering the contents of the application as there was a flaw in the sanction, which is very relevant and it can be unearthed by cross-examining PW-8. Said witness was not cross-examined properly as no question could be put to him regarding sanction of the prosecution. Learned counsel further contends that the accused should not suffer on account of technical lapse and in absence of cross-examination on this issue, a great prejudice would be caused to the petitioner. The impugned order has been passed in a mechanical manner without taking into consideration the provisions of Section 311 Cr.P.C.

Heard the argument advanced by learned counsel for the petitioner and have also gone through the impugned order and other

documents available on the file.

The application moved by the petitioner under Section 311 Cr.P.C. has been dismissed on the ground that the accused-petitioner had not adduced any evidence despite availing more than 15 effective opportunities. It was also mentioned that the accused was not having any defence to be adduced as neither he submitted any list of defence witnesses nor adduced any documentary evidence and there was no justification to further adjourn the case for defence evidence. It was also mentioned that charges were framed against the accused in the year 2012 and defence evidence was closed by the order of the Court.

Section 311 Cr.P.C. which is relevant for decision of controversy in the present case is reproduced as under:-

“311. Power to summon material witness, or examine person present. Any Court may, at any stage of any inquiry, trial or other proceeding under this Code, summon any person as a witness, or examine any person in attendance, though not summoned as a witness, or examine any person in attendance, though not summoned as a witness, or recall and re-examine any person already examined; and the court shall summon and examine or recall and re-examine any such person if his evidence appears to it to be essential to the just decision of the case.”

A perusal of provisions of Section 311 Cr.P.C. shows that the power is to be invoked only in case it is necessary to meet out the ends of justice or for strong or valid reasons but it is to be exercised with care and

caution. The Court should keep in mind that fair trial entails the interest of the accused, the victim and the society and for that fair and proper opportunities to the persons concerned must always be given. It empowers the Court at any stage of an inquiry, trial or other proceedings under the Code to summon any person as a witness or examine any person in attendance, though not summoned as witness, or recall and re-examine any such person already examined. The second part of the Section uses the word “shall”. It says that the Court shall summon and examine or recall or re-examine any such person, if his evidence appears it to be essential for just decision of the case. The words “essential to the just decision of the case” are the key words. The Court is to form an opinion that for the just decision of the case recalling or re-examination of the witness is necessary.

The exercise of this power is to be guided by the object of arriving at a just decision of the case. It should not cause prejudice to the accused. The purpose is not to fill up the lacuna. Whether recalling of a witness is for filling the lacuna or it is for just decision of a case depends on facts and circumstances of each case. It is for the Court to consider all the circumstances and to see as to whether the prayer for recall is genuine or not.

In the present case, the application was moved after a long delay only on the ground that issue of sanction was to be put to the witness. The trial is at the fag end. The purpose of filing the application appears to delay the proceedings. In absence of any plausible reason for recalling the said witness, the trial Court has rightly dismissed the application by passing a detailed reasoned order and by mentioning that PW-8 Avinash Dikshit was examined on 3.9.2013 and was cross-examined extensively by the

defence on that very day. Even the cross-examination of PW-8 Avinash Dikshit runs into three pages. Charges against accused were framed on 28.9.2012 and thereafter examination of prosecution witnesses started and examined including PW-8 and prosecution evidence was closed by PP for CBI on 10.10.2017. Thereafter accused was also examined under Section 313 Cr.P.C. by putting all the incriminating circumstances/documents. Thereafter the case was adjourned to 24.11.2017 for defence evidence. The case was adjourned on various occasions to enable the accused to bring defence witnesses but he did not examine any witness. In total more than 15 effective opportunities were granted still accused did not produce any evidence in defence. Neither the petitioner has supplied list of witnesses nor adduced any documentary evidence. By giving a detailed reasoning the application was rightly dismissed by the trial Court and as such no interference is required in the well reasoned order passed by the trial Court. The petition being devoid of any merit is hereby dismissed.

September 27, 2018
pooja

(DAYA CHAUDHARY)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
Yes