

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

CRM-M-10308-2018 (O&M)
Date of decision : 15.10.2019

Harjinder Kumar

...Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. L.C. Aggarwal, Advocate for the petitioner.

Mr. Surinder Pal Singh Tinna, Additional A.G. Punjab.

ANIL KSHETARPAL, J. (ORAL)

Petitioner-accused assails the correctness of orders dated 06.12.2017 and 05.02.2018 refusing opportunity to the petitioner-accused or his counsel to cross-examine first informant as well as Investigating Officer who has appeared as PW5.

Sh. Sikander Singh was examined as PW5 through video conferencing on 08.11.2017, however, on the request of counsel for the accused that he is not keeping good health, adjournment was granted and Sikander Singh was bound down for 17.11.2017. On next date of hearing i.e. 17.11.2017, accused was not produced by the Investigating Agency resulting in adjournment to 06.12.2017. The counsels had decided to

abstain from appearing in the Courts on 06.12.2017, but Court passed the order closing opportunity to the accused to cross-examine PW5-Sikander Singh and it was treated as NIL.

Application under Section 311 Cr.P.C. was also dismissed by the learned Special Court vide order dated 05.02.2018.

While dismissing the application, Special Court has relied upon the judgment passed by Hon'ble the Supreme Court in the case of **Ex-Capt. Harish Uppal Vs. Union of India (UOI) and another, AIR 2003 SC 739**. In the aforesaid case, Hon'ble the Supreme Court was examining the question as to whether the lawyers have a right to strike and/or to give a call for boycott of Court(s). Hon'ble the Supreme Court ultimately held that lawyers do not have a right to go on strike or boycott the Court(s).

No doubt, Hon'ble the Supreme Court has deprecated the practice of Advocate to go on strike, however, at the same time, accused has a right to defend the case. The accused is presumed to be innocent till he is convicted. As noted above, accused is in custody. He engaged a counsel to defend him. On 08.11.2017, counsel sought adjournment on the ground that he is not keeping good health. The Court accommodated and adjourned the case to 17.11.2017. On 17.11.2017, accused who is in custody was not produced by the Investigating Agency resulting in adjournment and on the next date i.e. 06.12.2017 as the lawyers had decided to abstain from appearing in the Court, the impugned order was passed.

Keeping in view the aforesaid facts, this Court is of the considered view that in the facts and circumstances of the present case, petitioner-accused deserves one opportunity to cross-examine the Investigating Officer. Hence, impugned orders dated 06.12.2017 and 05.02.2018 passed by the learned Special Court, are set aside.

Accordingly, the present petition is allowed.

Learned Special Court is directed to give one effective opportunity to the petitioner-accused to cross-examine PW5-Sikander Singh.

This order has been passed in the peculiar facts of the present case and shall not be considered as precedent.

15.10.2019

Pawan

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No