

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

**CRM M-8073-2019 (O&M)
Date of Decision : 25.03.2019**

Paramjit Kaur

..... Petitioner

Versus

State of Punjab and others

..... Respondents

CORAM : HON'BLE MR. JUSTICE RAJ SHEKHAR ATTRI

Present : Mr. Surinder Thakur, Advocate
for the petitioner.

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

Mr. Ruhani Chadha, Advocate
for respondent Nos.2 and 3.

RAJ SHEKHAR ATTRI, J. (Oral)

The petitioner has preferred the instant petition under Section 482 Cr.P.C. for quashing the order dated 13.10.2018, passed by the learned Judicial Magistrate Ist Class, Hoshiarpur, vide which the application under Section 311 Cr.P.C., filed by the petitioner, for summoning the witness Harjit Singh son of Banta Singh for examination was dismissed, as well as the order dated 02.02.2019, passed by the learned Addl. Sessions Judge, Hoshiarpur, vide which the revision petition filed by the petitioner against the said order dated 02.02.2019, was also dismissed.

Facts requisite for adjudication of matter in dispute are that complainant/Victim Smt. Paramjit Kaur (petitioner here) was married with Lakhwinder Singh. She alleges that her husband Lakhwinder Singh

solemnized remarriage with Mandeep Kaur-respondent No.2 without obtaining divorce from her.

After investigation, the report under Section 173 Cr.P.C. was submitted. One of the prosecution witness namely Harjit Singh son of Banta Singh was given up by the prosecution, being unnecessary.

It is the case of the petitioner that Harjit Singh is an essential witness and his evidence is essential for just decision of the case and also in the interest of justice. But he has been wrongly given up without getting recorded his statement. It has been further submitted that his statement was recorded under Section 161 Cr.P.C. which establishes the relevant facts and would clinch the matter under the scrutiny of the court.

The said application was contested on the ground that it will cause prejudice to the rights of the respondents as well as it will cause the delay.

The said application was dismissed by the learned Magistrate mainly on the ground that the said witness was given up by the prosecution being unnecessary and the Magistrate took the view that his evidence is not essential for just decision of the case. The revisional court also dismissed the revision petition, while observing that some of the witnesses have already been examined and they did not support the case of the prosecution and the complainant failed to establish as to how the evidence of said witness Harjit Singh son of Banta Singh is essential.

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

Learned counsel for the petitioner has submitted that the petitioner has been denied the right to adduce evidence. The public

prosecutor, without applying his mind, had wrongly given up the said witness whose evidence is highly essential.

On the other hand, learned counsel for the respondents has submitted that the petitioner wants to delay the proceedings; no purpose for calling the said witness for examination has been given and the said witness has already been given up by the prosecution and his summoning will amount to delay the proceedings. To substantiate this plea, learned counsel for the petitioner has placed reliance upon the judgment of Hon'ble Supreme Court in *Criminal Appeal No.15 of 2019 (arising out of S.L.P.(Crl.) No.7748 of 2017), titled as Swapan Kumar Chatterjee vs. Centrla Bureau of Investigation*, decided on 04.01.2019.

I have given my thoughtful consideration to the rival contentions.

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 sine qua non of the criminal jurisprudence. It is well settled that denial of fair trial is crucifixion of human rights. Fair trial is also 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 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.”

Secondly, it is well settled that a Judge, while conducting a criminal trial, is not merely a mock spectator. A criminal trial is a search of nothing but truth, and infact truth only. Therefore, a Judge has to intervene as and when required, especially to rule out his illegalities, irregularities or

infirmities and also the inadmissible evidence, but in the case in hand the Magistrate shut his eyes to the contentions raised by the petitioner/prosecutrix.

A bare perusal of the application under Section 311 Cr.P.C., submitted by the petitioner before the trial Magistrate makes it abundantly clear that the statement of said witness Harjit Singh son of Banta Singh has already been recorded during investigation. It is specifically stated that such statement establishes the relevant facts that would clinch the matter under the scrutiny of the court, thus, the petitioner wants to examine the said witness on the lines his statement, which was recorded during investigation. This fact also establishes the purpose of calling the said witness for examination.

When other witnesses failed to support the case of the prosecution, it was the duty of the public prosecutor to examine the said witness. Giving up such a witness is not appreciable and it amounts to denial of the fair trial to the complainant. This Court is of the view that evidence of said witness Harjit Singh son of Banta Singh is essential for just decision of the case and also in the interest of justice. Therefore, the impugned orders dated 13.10.2018 and 02.02.2019, passed by the learned trial court as well as learned revisional court respectively are not sustainable in the eyes of law. This court also does not appreciate the conduct of the public prosecutor, who has given up the said witness by stating that his evidence is unnecessary.

Consequently, the instant petition stands allowed and the impugned orders dated 13.10.2018 and 02.02.2019, passed by the learned trial court as well as learned revisional court respectively are set aside. The

trial court is directed to summon the said witness namely Harjit Singh son of Banta Singh and examine him expeditiously on day to day basis.

25.03.2019
mamta

(RAJ SHEKHAR ATTRI)
JUDGE

Whether speaking/reasoned	Yes/No
Whether Reportable :	Yes/No