

S.No.106

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

CRR No.594 of 2019 (O&M)

Date of Decision:12.03.2019

Hardeep Singh @ Deepa KakraPetitioner

Vs.

State of PunjabRespondent

CORAM:- HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

Present:- Mrs. Shashi Ghuman, Advocate for the petitioner.

Rajbir Sehrawat, J.(Oral)

The present petition has been filed challenging the order dated 07.12.2018 passed by Sessions Judge, Jalandhar, whereby the application filed by the petitioner/accused; for recalling PW1 to PW4 for cross-examining them again; has been declined.

A perusal of the file would show that the incident is alleged to have taken place at 07:30 P.M on 19.8.2009 in Village Taggar, Police Station Goraya, Tehsil Phillaur in which the complainant and other persons are alleged to have received injuries. The co-accused of the petitioner have already been convicted by the trial Court. However, the petitioner had not faced the trial because he was residing abroad and, therefore, he was declared proclaimed offender. Thereafter, the petitioner had appeared before the trial Court and the trial against him was started.

During the trial, the prosecution has examined as many as nine witnesses. Out of these, the petitioner had already cross-examined PW1 to PW4. However, thereafter, the petitioner had filed application under Section 311 Cr.P.C for recalling PW1 to PW4 for further cross-examination, on the ground that the earlier counsel had not put appropriate and relevant

questions to these witnesses during earlier cross-examination. Now the counsel has been changed. Therefore, the petitioner should be granted permission to re-cross-examine them, by putting relevant questions so as to establish the fact that the petitioner was not at the place of occurrence at the relevant time.

This application has been dismissed by the trial Court by observing that the petitioner has already cross-examined these witnesses at length. Now, the petitioner wants to introduce a story that since the petitioner had gone to Dubai on that date, therefore, it would not have been possible for him to go to Dubai without reaching the Airport at Delhi at least three hours before the time of flight; and if this time is counted then the petitioner would be shown to be not present on the scene of occurrence. However, this plea of the petitioner has been rejected by the Court by observing that there is nothing on record to show that the petitioner travelled to Dubai via the Airport at Delhi. There is no stamp of Delhi Airport on the passport of the petitioner. There is another Airport near to the place of residence of the petitioner, i.e. Airport at Amritsar. The Court has also observed that it is not even the case of the petitioner that these witnesses had accompanied him to Delhi; for seeing him off to Dubai. Hence, recalling of these witnesses is not necessary for just decision of the case.

Assailing the order passed by the Court below, learned counsel for the petitioner has submitted that since the prosecution evidence is already going on, therefore, no delay would be caused if the petitioner is

granted one opportunity to cross-examine these witnesses. It is further submitted that, on the contrary, if the relevant questions not put to these witnesses then the defence of the petitioner would be adversely affected.

Having considered the facts and circumstances of the case, the order passed by the trial Court as well as the submissions made by learned counsel for the petitioner, this Court does not find any illegality or impropriety in the order passed by the Court below. The Court below has rightly appreciated the facts on record and the legal proposition. Hence, there is no ground to interfere with the order on its merits.

Although this Court has not found any illegality or irregularity with the order passed by the trial Court, however, lest the petitioner should have any impressions; even though misconceived, that he has not been granted proper opportunity to defend himself, it would not be unjustified if the petitioner is granted one effective opportunity to cross-examine the witnesses mentioned in his application, however, by putting him to some financial burden.

In view of the above and in the interest of doing complete justice in the case, it is ordered that the trial Court shall grant one effective opportunity to the petitioner to cross-examine the said witnesses. However, this opportunity shall be granted to the petitioner subject to payment of Rs.35,0000/- as costs by him. It is further ordered that out of the amount of costs, Rs.10,000/- shall be deposited with the Institute for the Blind, Sector 26, Chandigarh and the balance amount of Rs.25,000/- shall be deposited with District Legal Services Authority, Jalandhar.

It is further ordered that the trial Court would summon the said witnesses for the next date fixed before it, i.e. for 18.04.2019; on the petitioner producing the present order before the trial Court. However, the petitioner shall be permitted the opportunity to cross-examine those witnesses only after he produces the receipt of deposit of the amount of costs; as mentioned above.

Disposed of.

March 12, 2019	(RAJBIR SEHRAWAT)
renu	JUDGE
Whether Speaking/reasoned	Yes/No
Whether Reportable	Yes/No