

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

206

CRM-M-22901-2018

Date of Decision:13.09.2019

Rakesh

.....Petitioner

Versus

State of Haryana

.....Respondent

CORAM: HON'BLE MR.JUSTICE HARI PAL VERMA.

Present: Mr. Rajesh Arora, Advocate,
for the petitioner.

Ms. Priyanka Sadar, AAG, Haryana.

HARI PAL VERMA, J.(Oral)

Petitioner has filed the present petition under Section 482 Cr.P.C. for setting aside the impugned order dated 11.12.2017 (Annexure P-5) passed by learned Additional Sessions Judge, Gurgaon, whereby application (Annexure P-4) filed by the petitioner under Section 311 Cr.P.C. seeking re-examination of the witnesses i.e. PW2-ASI Amandeep Kaur, PW6-Abdul Salam and PW7-Rashida Khatoon(complainant), was dismissed.

Learned counsel for the petitioner has argued that there was no appointment of Legal Aid Counsel to defend the petitioner-accused or to cross-examine the witnesses. The petitioner-accused could not properly cross-examine the witnesses i.e. PW2, PW6 and PW7 as he was not being represented by a counsel of his choice. The Court at his own wisdom has appointed the Legal Aid Counsel, who without having gone into the facts of

the case deeply and in the absence of any Power of Attorney executed by the petitioner, has cross-examined these witnesses. He states that valuable right of the petitioner is involved in the case and if the witnesses examined by the prosecution namely PW2, PW6 and PW7 are not being allowed to properly re/cross-examine, the petitioner shall suffer badly and adversely. Moreover, no prejudice is going to be caused to the prosecution in case re-examination of the aforesaid witnesses is allowed as it will clinch the real issue.

Learned State Counsel has argued that the petitioner had the ample opportunities to cross-examine the aforesaid witnesses and the learned trial Court has allowed the defence counsel to cross-examine the witnesses and therefore, having recourse to the provisions of Legal Services Authority Act, learned trial Court has appointed Mr. Arun Shokeen as a counsel in the case who has cross-examined the witnesses in the case. He was a Retainer being a Legal Aid Counsel and has duly cross-examined those witnesses. Power of Attorney is not required for Legal Aid Counsel once the Court has appointed the Legal Aid Counsel.

Heard learned counsel for the parties.

This Court on July 23, 2019 had passed the following order:-

“A report dated 06.09.2018 has been received from learned Additional District & Sessions Judge, Gurgaon, which refers to the letter endorsement No.74 dated 17.01.2017 of learned Chief Judicial Magistrate-cum-Secretary-DLSA, Gurugram, whereby Sh. Arun Shokeen, Advocate from District Legal Services Authority, Gurugram was appointed as a retainer.

Let a copy of letter dated 17.01.2017 and photocopy of the power of attorney if any executed by the petitioner in favour of Sh. Arun Shokeen, Advocate from District Legal Services Authority, Gurugram, be called for.

Office to intimate learned Additional District & Sessions

Judge, Gurgaon, in this regard.

List on 13.09.2019.

Interim order to continue.”

Pursuant to the aforesaid order, a report has been received from learned Chief Judicial Magistrate-cum-Secretary, District Legal Services Authority, Gurugram. As per communication dated 22.08.2019, Sh. Arun Shokeen, Advocate, who is otherwise on the panel of District Legal Services Authority, Gurugram, was appointed as a Retainer. The said communication is accompanied with the statement of Sh. Arun Shokeen, Advocate, who is on the panel of DLSA, Gurugram, which reads as under:-

“Stated that in the month of January, 2017, I was appointed as Retainer and as per Schedule Court of Ms. Rajni Yadav, the then ASJ, Gurugram (POCSO Court/Children Court) also appointed as Remand Hour Counsel of POCSO Court. During the performance of duties, as per Legal Services Authority Act, I was called by Hon'ble Court for cross-examination of witnesses in concerned case file. Being Retainer, I performed my duty and no Power of Attorney or memo or any other document which can be consider as Power of Attorney on behalf of accused was executed or tendered by me.”

As per aforesaid report, there is no dispute that these witnesses were cross-examined by Sh. Arun Shokeen, Advocate, in his capacity as a Retainer and he has performed his duties accordingly, but his statement further reflects that no Power of Attorney or Memo or any other document was executed on behalf of the accused. Accused has right to be represented by a pleader of his choice.

Though the allegations against the petitioner are serious, but in order to have a fair trial and to have a proper opportunity to the petitioner and more particularly in consonance with Section 303 Cr.P.C., where any

person who is accused of an offence has a right to be defended by a pleader of his choice and considering the judgment of this Court in Anchi @ Hans Raj Versus State of Haryana, 2015(26) R.C.R. (Criminal) 64, this Court finds that the petitioner deserves to be given one opportunity to re/cross-examine the said witnesses. The relevant provision i.e. Section 303 Cr.P.C. reads as under:-

“Section 303 Cr.P.C.- Right of person against whom proceedings are instituted to be defended:- Any person accused of an offence before a Criminal Court, or against whom proceedings are instituted under this Code, may of right be defended by a pleader of his choice.”

The photocopy of the record so produced by learned State Counsel does reflect that earlier Sh. DPS Chauhan and Ms. Rakesh Kumari, Advocates, have represented the accused. Even the cross-examination of the witnesses reflects that Sh. Arun Shokeen, Advocate, has appeared though these witnesses have been cross-examined by the defence counsel, however, in order to have a fair trial in the case and the petitioner being an accused in the case, in the absence of any Power of Attorney, so executed by the petitioner-accused endorsing the appointment of Sh. Arun Shokeen, Advocate, and having recourse to Section 303 Cr.P.C., this Court finds that the petitioner be given one opportunity to re/cross-examine the witnesses i.e. PW2, PW6 and PW7. The petitioner is accordingly directed to make statement before the trial Court specifically that he has authorized a particular counsel on the next date of hearing.

In view of the above, the present petition is allowed and the impugned order dated 11.12.2017 (Annexure P-5) passed by learned Additional Sessions Judge, Gurgaon, is hereby set aside and the petitioner is

granted one opportunity to re/cross-examine PW2, PW6 and PW7.

This Court has been apprised that the case is now fixed for 26.09.2019 before the trial Court for defence evidence. Since the petitioner has not been represented by a counsel of his choice, the petitioner shall make a statement before the trial Court informing therein that the person named by him is the counsel for him to further re/cross-examine the witnesses i.e. PW2-ASI Amandeep Kaur, PW6-Abdul Salam and PW7-Rashida Khatoon(complainant) and to represent him in the trial. However, under the garb of this order, petitioner shall not delay the proceedings in any manner.

September 13, 2019

seema

(HARI PAL VERMA)

JUDGE

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/Nos