

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

**CRM-M No. 24991 of 2019
Date of Decision:-29.5.2019**

Balwan

...Petitioner

Versus

State of Haryana

...Respondent

CORAM:- HON'BLE MR. JUSTICE MANOJ BAJAJ

Present:- Mr. Narender Kaajla, Advocate
for the petitioner.

MANOJ BAJAJ J.

The petition has been filed under Section 482 Cr.P.C. for challenging the orders dated 18.1.2019 and 24.4.2019 (Annexures P-4 and P-6) respectively, whereby the learned Additional Sessions Judge, Jind, after recording the depositions of three witnesses proceeded to treat the cross-examination as 'Nil (opportunity given)', as well as the subsequent order, whereby application filed by the petitioner under Section 311 Cr.P.C. for recalling the said witnesses for cross-examination was also declined.

Notice of motion.

On asking of the Court, Mr. Sukhdeep Parmar, DAG, Haryana accepts notice on behalf of respondent-State. Learned counsel for the petitioner has supplied a complete set of paper book to learned State counsel.

The petitioner is an accused in case FIR No.62 dated 01.3.2018, under Section 302 IPC, registered at Police Station Uchana and was regularly appearing before the Court at Narwana along with his counsel, namely, Vikram Goyal, Advocate.

After completion of investigation, the challan was presented before the Court of competent jurisdiction at Narwana and thereafter the matter was committed to the trial Court at Jind. According to learned counsel, the place is away from Narwana and the counsel, who represented the petitioner at Narwana, never appeared on his behalf at Jind. Learned counsel has further contended that on 18.1.2019, three witnesses were examined by the prosecution, however, on the said date, the Court proceeded to treat the cross-examination of the said witnesses as 'Nil (opportunity given)'.

Learned counsel for the petitioner contends that in case the accused is not allowed to cross-examine the prosecution witnesses, a serious prejudice would be caused to him, particularly when the cross-examination is to be conducted by a counsel and not by the accused. According to him the request for adjournment was also declined by the trial Court as noticed in the impugned order dated 18.1.2019. Besides, the offer of the Court for providing the legal aid counsel was not accepted by the petitioner, who desired to engage his own counsel. According to him, counsel for the accused had filed power of attorney on 15.2.2019 and moved an application under Section 311 Cr.P.C. for recalling the prosecution witnesses for cross-examination, whose cross-examination was

stated to be 'Nil (opportunity given)'.

Mr. Sukhdeep Parmar, DAG, Haryana does not dispute this fact that in case the accused is not allowed to cross-examine the prosecution witnesses, a serious prejudice would be caused to him as the evidence adduced by the prosecution would go unimpeached.

In view of the above, this Court finds that the impugned orders dated 18.1.2019 and 24.4.2019 (Annexures P-4 and P-6) respectively, are not sustainable and, resultantly, the same are set aside. It is ordered that all the three prosecution witnesses, who were examined by the prosecution on 18.1.2019, be recalled and effective opportunities be given to counsel for the accused to cross-examine the said witnesses.

Accordingly, the petition is allowed.

May 29, 2019
Vijay Asija

(MANOJ BAJAJ)
JUDGE

Whether speaking/reasoned
Whether Reportable

Yes / No
Yes / No