

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

CRR No.2897 of 2018 (O&M)

Date of Decision: 06.11.2019

Vicky

..... Petitioner

Versus

State of U.T., Chandigarh

..... Respondent

CORAM: HON'BLE MR. JUSTICE MAHABIR SINGH SINDHU

Present:- Mr. Divjyot S. Sandhu, Advocate for the petitioner.

Mr. Y.S.Rathore, Addl. Public Prosecutor, UT, Chandigarh
for the respondent.

MAHABIR SINGH SINDHU, J.

Present revision petition has been filed under Section 401 of the Code of Criminal Procedure, 1973 (*for short 'Cr.P.C.'*) for setting aside the impugned order dated 24.08.2018, passed by learned Additional Sessions Judge, Chandigarh (*for short 'trial Court'*), whereby the application filed by the petitioner under Section 311 of the Cr.P.C. for recalling of the prosecution witnesses (PW-2 to PW-6) has been dismissed.

Brief facts of the case are that an FIR No.125 dated 05.07.2017, under Section 22 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (*for short 'NDPS Act'*) was registered at Police Station Maloya, Chandigarh against the petitioner on the allegations of unlawful possession of 20 injections (2 ml. each) of Buprenorphine as well as 20 injections (10 ml. each) of Pheniramine Avil. After usual investigation, report under

Section 173 Cr.P.C. was presented before learned trial Court and copy of the same was supplied to the petitioner as per law. Learned trial Court, after taking into consideration the material available on record, *prima facie*, found that petitioner has committed an offence under Section 22 of the NDPS Act and charge-sheeted him accordingly, to which, he pleaded not guilty and claimed trial. Case was fixed for prosecution evidence on 27.04.2018 and after examining one PW, adjourned to 23.05.2018 for remaining prosecution evidence. On that day, five prosecution witnesses i.e. PW-2, PW-3, PW-4, PW-5 and PW-6 were examined and case was adjourned to 03.07.2018 for remaining prosecution evidence. On 03.07.2018, an application under Section 311 Cr.P.C. was moved by the petitioner for recalling of PW-2 to PW-6 for their further cross-examination on the ground that earlier counsel, namely, Sh. Sahil Shori, Advocate remained admitted in the hospital on account of burn injuries and the new counsel i.e. Sh. Paramjit Singh Saini, Advocate could not cross-examine the above prosecution witnesses properly on 23.05.2018, thus, a great prejudice has been caused to him.

Reply to the application was filed on behalf of the respondent, *inter alia*, submitted that petitioner engaged the counsel on 22.03.2018; charges were framed on 04.04.2018, prosecution witnesses (PW-2 to PW-6) were cross-examined at length by the defence counsel and the present application has been filed just to delay the proceedings. Also submitted that application is totally vague and does not disclose as to on which point the petitioner wants to cross-examine the PW-2 to PW-6.

It is contended on behalf of the petitioner that due to ill health of the earlier defence counsel, a new counsel was engaged only on 23.05.2018 and on that day, five prosecution witnesses were examined, but due to lack of proper briefing, he was not able to cross-examine the prosecution witnesses, thus, a great prejudice has been caused to the petitioner.

On the other hand, learned counsel for the respondent opposed the prayer and submitted that although the free and fair trial is the cardinal principle of criminal jurisprudence, but the petitioner had engaged the counsel of his own choice and he was given full opportunity to cross-examine the prosecution witnesses. Also submitted that petitioner has changed five different counsels in this case just to prolong the trial and moreover, the prosecution witnesses were duly cross-examined by the defence counsel on 23.05.2018, thus, the application under Section 311 Cr.P.C. has been filed for ulterior motive to delay the proceedings.

Heard both sides and perused the paper-book.

Record of the case reveals that FIR was registered on 05.07.2017. Petitioner was produced before learned Judicial Magistrate 1st Class, Chandigarh (*for short 'JMIC'*) along with case property on 06.07.2017. On the same day, an application under Section 52A of the NDPS Act was moved by the Investigating Officer and it transpires that Sh. Arun Vohra, Advocate (Enrl. P/2284/2006) filed his *Vakalatnama* (Power of Attorney) dated 06.07.2017 on behalf of the petitioner. Learned JMIC sent the petitioner to judicial custody and he was ordered to be produced before the Special Court on 20.07.2017. On that day, learned Special Court extended

the judicial remand of the petitioner for 14 days through Video Conferencing for 31.07.2017, then for 14.08.2017 and on that day, Sh. Sahil Shori, Advocate (Enrl. P/1627/2011) filed his *Vakalatnama* (Power of Attorney) dated 14.08.2017 on his behalf. Judicial remand of the petitioner was extended from time to time; report under Section 173 Cr.P.C. was submitted on 21.12.2017, but the matter was adjourned to await the CFSL report on certain occasions. On 22.03.2018, Sh. Jasbir Singh Dadwal, Advocate (Enrl. No.P/1755/2002) filed his Power of Attorney and appeared on behalf of the petitioner. Case was adjourned to 04.04.2018 and on that day, charges were framed under Section 22 of the NDPS Act, to which, petitioner pleaded not guilty, claimed trial and case was adjourned to 27.04.2018 for prosecution evidence. On 27.04.2018, one PW, namely, Sr. Constable Davinder Kumar was examined and case was adjourned to 23.05.2018 for remaining prosecution evidence. On that day i.e. 23.05.2018, Sh. Paramjit Singh Saini, Advocate (Enrl. No.P/2216/99) appeared on behalf of the petitioner, filed his *Vakalatnama*, duly attested by Dy. Supdt., Model Jail, Chandigarh on 20.05.2018 and five prosecution witnesses, namely, SI Mehar Singh (PW-2), SI Naveen (PW-3), ASI Baljinder (PW-4), MMHC Sanjeev Kumar (PW-5) and Inspector Baljit Singh (PW-6) were examined and case was adjourned to 03.07.2018 for remaining prosecution evidence. On 03.07.2018, an application under Section 311 Cr.P.C. through Sh. Jasbir Singh Dadwal, Advocate was filed on behalf of the petitioner for recalling of five prosecution witnesses i.e. PW-2 to PW-6 for their further cross-examination on the ground that defence counsel, Mr. Sahil Shori,

Advocate suffered burn injuries and new defence counsel Sh. Paramjit Singh, Advocate cross-examined the prosecution witnesses, but he could not confront them with material facts as the same were not in his knowledge due to the reason that he filed his Power of Attorney only on 23.05.2018 and para 2 of the application being relevant reads as under:-

“ That the applicant/accused arrested in the present case. After completion of the investigation challan has been presented against him and accordingly charge has been framed against him by this Hon'ble Court. The applicant/accused engaged Mr. Sahil Shori Advocate as his defence counsel, but the counsel for the applicant/accused sustained burnt injury and remained admitted in the hospital for some period and could not recover from injuries. Due to his ill health Mr. Sahil Shori Advocate left the brief and petitioner under compelling circumstances engaged the counsel, but the complete paper book has not been supplied to him, moreover he was not apprised with the actual facts of the case. Mr. Paramjit Singh Advocate filed his power of attorney on 23.05.2018 and on the same day five witnesses have been examined. Copy of medical certificate of Mr. Sahil Shori Advocate is attached herewith.”

Also necessary to mention here that on 03.07.2018, no prosecution witness was present and learned Public Prosecutor gave up 07 witnesses i.e. Ahlmad to the Court of Sh. Harjot Singh Gill; Sanjit Kumar; MHC P.S. Maloya; HC Yashpal; DSP Pawan Kumar; Inspector Ram Rattan and HC Ompal being unnecessary and case was adjourned to 12.07.2018 for filing reply to the application under Section 311 Cr.P.C. as well as for remaining prosecution evidence. On 12.07.2018, one more prosecution witness, namely, Atul Bajaj was examined as PW-7 through video

conferencing, reply to the application under Section 311 Cr.P.C. was also filed by the respondent and case was adjourned to 30.07.2018. Since the Presiding Officer was on leave on 30.07.2018, therefore, the case was adjourned to 24.08.2018 and on that day, the application under Section 311 Cr.P.C. was dismissed vide impugned order and case was adjourned to 04.09.2018 for recording the statement of petitioner under Section 313 Cr.P.C.

In the interregnum, present petition was filed, which came up for hearing on 30.08.2018 and this Court passed the following order:-

“Learned counsel for the petitioner states that petitioner could not cross-examine the official witnesses as his lawyer Sahil Shori was not well. He (Sahil Shori) sustained serious burn injuries and remained in hospital and could not recover from the burn injuries and in this situation, the petitioner has to engage a new lawyer Paramjit Singh on the same day and the court insisted to cross-examine the witnesses. Thus in this background, without having complete background of the case, the counsel Paramjit Singh could not effectively cross-examine the witnesses.

Notice of motion.

At the asking of the Court, Ms. Ashima Mor, APP, UT, Chandigarh, accepts notice on behalf of the respondent.

Let a copy of paper book be given to learned counsel appearing on behalf of respondent during the course of the day.

Adjourned to 05.09.2018.

Meanwhile, trial Court shall adjourned the case immediately after the date fixed by this Court.”

It transpires that case was adjourned on different occasions, above interim order dated 30.08.2018 was extended from time to time and the

same was also brought to the notice of the Presiding Officer, as is clear from the *zimni* order 04.09.2018, passed by learned trial Court. Thereafter, case was adjourned by learned trial Court for awaiting the further orders from this Court. Ultimately, on 07.02.2019, another new defence counsel, namely, Sh. Yadvinder Singh Sandhu, Advocate appeared on behalf of the petitioner before learned trial Court and he made a statement that no stay order has been granted by the High Court. In view of the categorical stand of learned defence counsel, the case was adjourned to 16.02.2019 for recording the statement of petitioner under Section 313 Cr.P.C. and order dated 07.02.2019, passed by learned trial Court, reads as under:-

*“ Present: Sh. Ashok Rohilla, PP for the State.
Accused in custody with Sh. Yadvinder Singh
Sandhu, Advocate.*

*Power of attorney filed on behalf of accused.
Learned counsel for the accused along with accused suffered
the statement that no stay order has been granted by the
Hon'ble Punjab and Haryana High Court. In view of the
statement suffered on behalf of learned counsel for the accused,
the case is adjourned to 16.02.2019 for recording the statement
of accused under Section 313 CrPC.”*

On 16.02.2019, statement of petitioner was recorded under Section 313 Cr.P.C. and case was adjourned to 11.03.2019 for defence evidence, if any, otherwise for arguments.

On 11.03.2019, 20.03.2019, 26.03.2019 and 04.04.2019, no defence witness was present and case was adjourned to 08.04.2019 by learned trial Court. On that day, two defence witnesses (DW-1 and DW-2) were examined and case was adjourned to 18.04.2019, but on that day also,

no defence witness was present, thus, case was adjourned to 26.04.2019 and on that day, one defence witness-HC Surinder Pal (DW-3) came present, but he could not be examined as the defence counsel was not present and witness was bound down for 04.05.2019. On that day, one more defence witness, namely, HC Sunder Lal (DW-3) came present and he was examined. Since no other DW was present, the case was adjourned to 10.05.2019 for defence evidence and arguments. Thereafter, continuously, the case has been adjourned for defence evidence and arguments on 10.05.2019, 22.05.2019, 23.05.2019, 30.05.2019, 01.07.2019, 09.07.2019, 16.07.2019, 22.07.2019, 05.08.2019, 13.08.2019, 22.08.2019, 26.08.2019, 27.08.2019, 29.08.2019, 02.09.2019, 04.09.2019, 09.09.2019, 11.09.2019 and 13.09.2019.

On 13.09.2019, learned trial Court passed the following order:-

“No Dw is present. Learned counsel for the accused for the first time has brought to the notice of undersigned that proceedings in the present case are stayed by the Hon'ble High Court. This fact was neither brought to the notice of the undersigned by learned PP nor by the defence counsel till today. Present case was put up before the undersigned on 08.04.2019 for the first time and the same was fixed for the evidence of the accused on the said date. Perusal of the file reveals that learned Predecessor passed the order on 07.02.2019 for the recording of the statement of accused under Section 313 Cr.P.C. as accused suffered the statement as no stay order was granted by the Hon'ble High Court. Since then no further order has been received in this court from the Hon'ble High Court.

However, when this court went through the court file, it finds that vide order dated 05.09.2018, the interim order was made to continue by the Hon'ble High Court and vide order dated

30.08.2018, it was directed to adjourn the case immediately after the date fixed by the Hon'ble High Court for 05.09.2018.

In view of the order passed by the Hon'ble High Court, case is adjourned to 31.10.2019 for awaiting further order from the Hon'ble High Court.”

In view of the sequence of narration, recorded above, it is apparently clear that trial is practically over as the evidence by both sides have already been concluded and the case has been adjourned from time to time for final arguments on more than 20 (twenty) occasions, but the same could not be concluded in view of the pendency of the present petition.

Despite the above factual position, this Court has minutely gone through the testimonies of PW-2 to PW-6, recorded by learned trial Court on 23.05.2018 and after perusal of the same, this Court is fully satisfied that all the above witnesses were duly cross-examined by learned defence counsel and thus, no prejudice has been caused to the petitioner in any manner.

Needless to say that every lawyer has his own line of action to cross-examine the prosecution witnesses and there may be difference of opinion by the other counsel, but certainly that cannot be the basis for further cross-examination of a witness in terms of Section 311 Cr.P.C., who has already been duly cross-examined merely on the analogy of hair splitting and just to prolong the trial.

This Court has also gone through the contents of the application and perusal of para 3 of the same reveals that even number of the Mobile Phone is left blank regarding which reference is made for making a call to

the police control room for false implication of the petitioner. Records of the case reveal that power of attorney was attested by the Dy. Supdt., Model Jail, Chandigarh in favour of Sh. Paramjit Singh Saini, Advocate on 20.05.2018 and the prosecution witnesses (PW-2 to PW-6) were examined on 23.05.2018, thus, even otherwise, he had sufficient time to prepare the case. Also to be noticed that application under Section 311 Cr.P.C. has been filed by Sh. Jasbir Singh Dadwal, Advocate who had initially appeared on behalf of the petitioner on 22.03.2018, superseding the earlier counsel, namely, Sh. Sahil Shori, Advocate. Therefore, the averments in para 2 of the application that Sh. Sahil Shori was not able to conduct the case on behalf of the petitioner due to the burn injuries are factually incorrect as after 22.03.2018, he never appeared in this case on behalf of the petitioner, rather Sh. Jasbir Singh Dadwal, Advocate was appearing as defence counsel and this fact is duly proved from the *zimni* orders dated 22.03.2018 as well as 04.04.2018, passed by learned trial Court, which are as under:-

*Present: Sh. Vishal Garg, APP for the State.
Accused in custody with counsel Sh. Jasbir Singh
Dadwal, Adv.*

Sh. Jasbir Singh Dadwal, Advocate has filed Power of Attorney on behalf of accused Vicky. CFSL report still not received. A letter be again written to Director CFSL, Chandigarh to send the report at the earliest so that the trial may proceed. Adjourned to 4.4.2018 for awaiting CFSL report. Reminder be issued.

Date of Order: 22.3.2018

*Sd/-
Additional Sessions Judge*

*Present: Dr. Ritu Jain, PP for the State.
Accused in custody with counsel Sh. Jasbir Singh
Dadwal, Adv.*

Heard. From the perusal of the report under S.173 of

Code of Criminal Procedure, a prima-facie case for the offence under Section 22 of NDPS Act, is made out against the accused namely, Vicky. Let he be charge sheeted accordingly. Copy of challan has been given to the accused under Section 207 Cr.P.C., free of cost.

*Sd/-
Judge, Special Court/Chd.*

*Present: Dr. Ritu Jain, PP for the State.
Accused in custody with counsel Sh. Jasbir Singh
Dadwal, Adv.*

*Accused has been charge sheeted for the offence **under Section 22 of NDPS Act** to which, he pleaded not guilty and claimed trial. Now the case is adjourned to **27.4.2018 for prosecution evidence**. PWs be summoned for the next date.*

Date of Order: 4.4.2018

*Sd/-
Judge, Special Court/Chd.*

Still further, on 27.04.2018, petitioner was represented by another counsel, namely, Sh. Mandeep Kumar, Advocate and on that day, as already mentioned, one PW-Sr. Constable Davinder Kumar was examined as PW-1.

Thus, the irresistible conclusion is that no prejudice has been caused to the petitioner while recording the testimonies of PW-2 to PW-6 on 23.05.2018 by learned trial Court and all these prosecution witnesses were duly examined by learned defence counsel. The pleas raised in the application under Section 311 Cr.P.C. are absolutely concocted, contrary to record, just to prolong the trial and has rightly been rejected by learned trial Court while passing the impugned order.

As already noticed by this Court, the petitioner engaged as many as 05 (five) counsel in this case and no grievance was ever raised by his counsel at the time of recording the testimonies of PW-2 to PW-6 on 23.05.2018. Thus, the contention raised on behalf of the petitioner before

this court on 30.08.2018 at the time of issuing notice of motion to the effect that in place of Mr. Sahil Shori, Advocate, petitioner had to engage a new lawyer, namely, Mr. Paramjit Singh, Advocate and on the same day, learned trial Court insisted to cross-examine the witnesses is factually incorrect.

Also noteworthy that this Court on 30.08.2018 had directed the trial Court to adjourn the case beyond the date fixed and the interim order is continuing till date. Despite that, learned trial Court has not only recorded the statement of petitioner under Section 313 Cr.P.C., but also concluded the evidence of both sides. Although, the course adopted by learned trial Court was not proper, but this Court has no hesitation in saying that same was the result of the statement made by learned defence counsel on 07.02.2019 and thus, learned trial Court cannot be held responsible in any manner. Since the proceedings were conducted by learned trial Court, *de hors* the order dated 30.08.2018, passed by this court, therefore, learned Presiding Officer is advised to be more cautious in future while dealing with such a situation for the betterment of judicial propriety and it would be more appropriate if the status of the case is verified from the website of this Court or confirmed through telephone to avoid any adverse consequences.

In view of above, this Court is of the opinion that no prejudice has been caused to the petitioner while recording the statements of PW-2 to PW-6 on 23.05.2018 and the application, filed under Section 311 Cr.P.C., is absolutely misuse of the process of the Court with ulterior motive just to delay the trial and learned trial Court did not commit any illegality, rather rightly rejected the same by passing the impugned order dated 24.08.2018.

Accordingly, this petition is hereby dismissed.

Learned trial Court is requested to proceed in the matter expeditiously.

However, it is clarified that the observations, made above, may not be construed as an expression of opinion on the merits of the case.

Registry is directed to send the original record of learned trial Court forthwith through Special Messenger.

November 06, 2019

Gagan

(MAHABIR SINGH SINDHU)

JUDGE

Whether speaking/reasoned	Yes
Whether Reportable	Yes