

Sr. No.125

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

**CRM-M-46217-2019(O&M)
Date of decision:31.10.2019**

Sukhdev Singh

.....Petitioner

versus

Davinder Singh @ Rinku and others

.....Respondents

Coram: HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

Present: Mr. Ankit Chowdhri, Advocate
for the petitioner.

Rajbir Sehrawat, J(Oral)

Present petition has been filed for setting aside the impugned Order dated 02.07.2019, passed by the learned Additional Sessions Judge, Jalandhar(Annexure P-5), dismissing an application filed by the present petitioner under Section 391 of Cr.P.C for adducing additional evidence at the appellate stage.

Facts of the case are that FIR in the case was got registered by the present petitioner/applicant way back on 21.11.2012 under Section 323, 452, 341, 34 IPC registered at Police Station Bawa Khel, Jalandhar. The charge in the case was framed on 15.04.2014. Thereafter, the trial of the case was continued for more than three years. However, ultimately the respondent/accused was acquitted on 14.08.2017.

Feeling aggrieved against the same, the petitioner filed an appeal against acquittal of the accused. As appeal had been pending for about more than one year, the petitioner/complainant filed an application under Section 391 Cr.p.c for leading additional evidence, by way of

recalling of PW-Renu for cross-examination and for summoning ASI Lakhwinder Singh as the prosecution witness. The said application has been declined by the Court below. It is against that Order of the lower Appellate Court that the present petition has been filed.

While arguing the case, learned counsel for the petitioner has submitted that the petitioner had already taken the plea of non-completion of the evidence of the prosecution during the trial as ground in the appeal. Therefore, by filing the application, the petitioner only tried to get his remedy to substantiate his argument qua the evidence and to complete the evidence. It is further contended that there was no intention on the part of the complainant/petitioner to delay the matter. Still further it is submitted that no coercive steps were adopted by the Trial Court for ensuring the presence of the ASI Lakhwinder Singh.

Learned counsel for the petitioner has relied upon the judgments of the Hon'ble Supreme Court rendered in ***Zahira Habibulla H.Sheikh and another versus State of Gujarat and others 2004(2) R.C.R. (Criminal) 836, Pranab Bishwas versus State of Punjab; 2012(4) R.C.R. (Criminal) 337;*** to support the argument that the Hon'ble Supreme Court has amply clarified that the Appellate Court has wide powers to grant permission for leading additional evidence at the stage of appeal as well. Hence, it is submitted that the present petition be allowed. Impugned order be set aside and the petitioner be permitted to lead additional evidence before the Court below.

Having heard the learned counsel for the petitioner and perusing the case, this Court does not find any substance in the argument of learned counsel for the petitioner. The lower Appellate Court has

categorically recorded that as per the record, the prosecution was granted 21 effective opportunities for completing the entire evidence of the prosecution. Despite that, the prosecution had not examined the said ASI Lakhwinder Singh. Still further it has been recorded by the Court below that during the trial PW-Renu was examined. But she did not turn up for cross-examination. Even warrant were issued against her, however, she was not produced for cross-examination. Still further, it is recorded that when the prosecution had failed to complete its evidence then the Trial Court had even close the evidence of the prosecution by Order of the Court on 11.05.2017.

This Court does not find any illegality or infirmity with the findings recorded by the Court below. It has been amply borne out from the record that the petitioner/prosecution had already been granted more than enough opportunities to complete their evidence. The evidence of the prosecution can not be kept an open ended chain of opportunities for the prosecution to let loose the harassment at the accused; just for the luxury of the prosecution. Any procedure adopted during the trial has to be reasonably fair. Therefore, the Trial Court had rightly closed the evidence of the prosecution after granting 21 effective opportunities of the prosecution.

It has also come on record during the trial that the evidence of the prosecution was closed by Order of the Trial Court on 11.05.2017 and that Order had never been challenged by the prosecution or by the petitioner. Therefore, the said Order had attained finality. In the garb of moving an application during the appeal, the petitioner can not be permitted to get re-open the matter which had attained finality by order of the Trial

Court, whereby the evidence of the prosecution was closed.

CRM-M-46217-2019(O&M)

-4-

Otherwise also, the petitioner is seeking to summon the PW-Renu for cross-examination. However, a complainant, can not insist upon cross-examination of the witness. This complaint, could have been available only to the accused that he had not been granted opportunity to cross-examine a witness, which was examined against him. Moreover, the Court below has recorded that after examination-in-chief, the prosecution was granted several opportunities to produce this witness for cross-examination. However, she was not produced for cross-examination. Needless to say that it was for the prosecution to prove the case beyond reasonable doubt during the trial. The prosecution can not be permitted to take advantage of its own wrong and now cause prejudice to the accused on the points, which have already attained legal finality, and the accused has even been acquitted.

Learned counsel for the petitioner has cited the judgments in the cases of ***Zahira Habibulla H. Sheikh and another(supra) and Pranab Bishwas(supra)***. However, this Court finds that the said judgments are totally distinguishable. The proposition that the Court has power to permit the additional evidence even at the stage of appeal; is no-where in doubt or dispute. However, it is a question of the manner in which the discretion is to be exercised by the Court below for permitting additional evidence in appeal. In the facts of the present case, the Court below has rightly exercised its discretion. Even this Court find itself in agreement with the discretion exercised by the Court below.

In view of the above, finding no merit in the petition, the same is dismissed.

31st October, 2019

Shivani Kaushik

Whether speaking/reasoned

Whether Reportable

Yes/No

Yes/No

[RAJBIR SEHRAWAT]

JUDGE