

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM M-47451 of 2018

Date of Decision: January 29, 2019.

Rajinder Kumar

.....Petitioner

Versus

State of Punjab

.... Respondent

CORAM : HON'BLE MR. JUSTICE FATEH DEEP SINGH

Present : Mr. J.S. Grewal, Advocate
for the petitioner.

FATEH DEEP SINGH, J. (Oral)

This is a petition under Section 482 Cr.P.C. filed by petitioner Rajender Kumar challenging an order dated 19.02.2018 (Annexure P-2) passed by the learned Judicial Magistrate 1st Class, Abohar, whereby the cross examination of PW Monika was not deferred on the request of the defence and rather through the impugned findings has treated the cross-examination of this witness to be nil. The same was challenged in revision and the Court of learned Additional Sessions Judge through impugned findings dated 11.09.2018 (Annexure P-6) dismissed the revision of the petitioner.

Upon hearing Mr. Jaswinder Singh Grewal, counsel for the petitioner and on perusal of the record and the facts including that of the trial Court no doubt for certain reasons the trial has been much delayed and it was with much efforts the presence of witnesses, namely, Monika, ASI Baljeet Singh and HC Atma Ram were procured by the trial Court. On

19.02.2018 on the grounds that the defence counsel was not available, the cross-examination of PW Monika was treated as nil, which is the subject of challenge.

Apparently, from the records it was because of the reasons that the counsel for the defence was not available as he had gone out of station, a request had come about from the defence side and the Court below had recorded the examination-in-chief of three witnesses, namely, Monika, ASI Baljeet Singh and HC Atma Ram and in the absence of the counsel for the accused had passed the impugned order and perusal of the record shows further that not even a single opportunity has been afforded to the defence to cross-examine them. When earlier on 14.12.2017 warrants of arrest of PW Monika was issued and on the next date, i.e. 24.01.2018 PW SI Shinder Singh and HC Atma Ram were served but had not come present and no other PW was present and, thereafter, on 19.02.2018, the impugned order dated 19.02.2018 (Annexure P-3) is passed. Thus, from this all, it is suggestive of the fact of undue haste with while the trial Court had gone about while concluding the case. The dispensation of justice does not mean or can be construed that the Court be so strict as not to afford reasonable opportunity of cross-examination to a party. Not only a single opportunity has been afforded and on the day the witnesses were present their examination-in-chief was recorded in the absence of the defence counsel and thereafter the impugned orders were passed, rather has resulted in immense prejudice to the case of the petitioner. No doubt, the Courts need to make endeavour in speedy disposal of the case but undue haste of such a nature would certainly be detrimental to the dispensation of justice. The accused needs to be afforded reasonable opportunity to defend himself. In the the present case, the charges were framed on 08.06.2015 and the impugned order was passed on 19.02.2018. Further, on perusal of the

impugned finding there was sufficient explanation and sufficient cause seeking deferring of the cross-examination of the PW as counsel was out of station to attend marriage in his relations. The Court has certainly run into an error by not affording sufficient time for cross-examination of the witnesses of the prosecution. It would subserve the ends of justice if one opportunity is afforded to the defence to cross-examine this witness subject to the accused side depositing Rs.20,000/- as costs out of which 50% of the amount would go to this prosecution witness, who will be called again in consequence of this impugned order and 50% will go to the District Legal Aid which will be a pre-condition. It would be worthwhile to observe that in case for some reasons the witness is unable to come personally, it would be open to the trial court to record her evidence through video conferencing by using appropriate mode. The defence shall be afforded only one opportunity for this purpose. The present petition is, accordingly, disposed off.

January 29, 2019
amit rana

(FATEH DEEP SINGH)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No