

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

**CRM-M-527-2020 (O&M)
Date of decision: 13.01.2020**

Naveen Shegal

....Petitioner

Versus

Central Bureau of Investigation, Chandigarh

....Respondent

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: Mr. B.D. Sharma, Advocate
for the petitioner.

Mr. Sumeet Goel, Standing Counsel for CBI.

ARVIND SINGH SANGWAN, J.

Prayer in this petition is for setting aside the order dated 13.12.2019 (Annexure P-6) passed by the Special Judge, CBI Court, Chandigarh, vide which, he has allowed the prayer of the CBI to examine two witnesses Manohar Lal and Didar Singh as additional prosecution witnesses at the fag end of the trial; that too, on oral request of counsel for CBI, though they were not cited as witnesses in the challan submitted before the Court and their statements under Section 161 Cr.P.C. were not recorded.

Learned counsel for the petitioner submits that before filing of the present petition, the aforesaid two witnesses PW38 Didar Singh and PW39 Manohar Lal have already been examined. It is further submitted that

when these witnesses were examined, the petitioner had made a request for deferring the recording the statements of these witnesses, as he intended to file the present petition, however, considering it an old case, the trial Court treated their cross-examination as Nil.

Learned counsel for the petitioner further submits that in view of the objection taken by counsel for the petitioner, the trial Court has recorded a note to this effect, on the statement made by the counsel representing the petitioner that he is unable to cross-examine the witness till the proper procedure is followed to summon such witnesses by affording an opportunity to the accused person. Thereafter, cross-examination of these two witnesses could not be recorded, in view of the fact that the petitioner intended to challenge the said order by way of filing the present petition. It is further submitted that the effect of recording the statements of these two witnesses PW38 Didar Singh and PW39 Manohar Lal would also prejudice the right of the petitioner, in a manner that when statement of the Investigating Officer K.S. Rana was recorded as PW37, certain questions with regard to these two witnesses were not put to him, as it was not in the knowledge of the petitioner that this will be permitted subsequently. One of the witness PW11 Saurav Kant, whose voice sample along with voice sample of the petitioner were taken and Saurav Kant PW11 (later on turned as approver) by the Investigating Officer K.S. Rana PW37, whereas PW38 Didar Singh and PW39 Manohar Lal were the witnesses to this proceeding and therefore, the petitioner has a right to further cross-examine PW37 K.S. Rana as well as PW11 Saurav Kant in this manner.

Learned counsel for the petitioner has relied upon a judgment of the Hon'ble Supreme Court in **Rajaram Prasad Yadav Vs. State of Bihar and another, 2013 (3) RCR (Criminal) 726**, wherein it is held that an order under Section 311 Cr.P.C. should be passed after affording an opportunity of hearing to the accused persons. It is argued that while passing the impugned order, the trial Court has neither recorded its satisfaction that by allowing the additional evidence, the aforesaid two witnesses are necessary for just and fair decision of the case nor has accorded an opportunity of hearing, as it was done on the oral request of counsel representing the CBI.

In reply, learned counsel for the respondent-CBI has relied upon **Khatta Singh Vs. CBI Chandigarh and others, 2018 (3) RCR (Criminal) 708**, wherein this Court has held that it is open for the Court to take suo motu exercise for such powers and obviously from whatever source the Court receives the information with regard to its satisfaction about the evidence and its requirement for decision of the case does not really make any difference.

However, perusal of this judgment shows that it was based upon an order, which was passed, after the prosecution has moved an application and an opportunity of hearing was granted to the accused to rebut the same.

Learned counsel for the petitioner has, however, submitted that in case, the petitioner is granted an opportunity to cross-examine PW38 Didar Singh and PW39 Manohar Lal along with further cross-examination of PW37 K.S. Rana, Investigating Officer as well as PW11 Saurav Kant, approver, he will not press the prayer with regard to allowing the application under Section 311 Cr.P.C. on the oral request made on behalf of CBI, so as the proceedings

before the trial Court are not delayed further.

Learned counsel for the respondent-CBI has opposed this prayer that it will further delay the proceedings, as sufficient opportunity has already been granted to the petitioner.

After hearing learned counsel for the parties, though I find that the trial Court has not adopted the proper procedure, by allowing the prayer of the CBI, which is virtually a prayer under Section 311 Cr.P.C. and not affording an opportunity of hearing to the accused persons as well as by not recording its satisfaction in the impugned order that the proposed additional witness is required for just and fair decision of the case. However, considering the request made by learned counsel for the petitioner that he will be satisfied if the petitioner is granted permission to cross-examine PW38 Didar Singh and PW39 Manohar Lal along with further cross-examination of the Investigating Officer K.S. Rana PW37 and PW11 Saurav Kant, for the reasons that the petitioner otherwise has a right to cross-examine PW38 Didar Singh and PW39 Manohar Lal and since the evidence, which has come for the first time during examination-in-chief of these two witnesses, has prejudiced the right of the petitioner, as he was not aware that two additional witnesses will be permitted as additional evidence, after recording PW11 Saurav Kant and PW37 S.K. Rana, these two witnesses need to be cross-examined further, as they are witnesses of the proceedings, vide which the voice sample of the petitioner as well as PW11 Saurav Kant were taken.

Therefore, I find that it will be in the interest of justice to grant permission to the petitioner to further cross-examine PW11 Saurav Kant and

PW37 K.S. Rana, Investigating Officer.

Accordingly, this petition is partly allowed. It is directed that the trial Court will grant two effective opportunities to the petitioner for cross-examination of PW38 Didar Singh and PW39 Manohar Lal and to further cross-examine PW11 Saurav Kant and the Investigating Officer K.S. Rana PW37. The effective opportunity would infer that the witnesses are summoned by the Court and are present for cross-examination.

Since there are more than one accused persons, who are facing the trial, it will also be open for the other accused to cross-examine/further cross-examine the aforesaid four witnesses, in accordance with law.

Petition stands disposed of.

[ARVIND SINGH SANGWAN]
JUDGE

13.01.2020
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Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No