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

**CRR No.578 of 2020 (O&M)
Date of Decision:16.03.2020**

Gurjit Singh

.....Petitioner

Vs

State of Punjab and another

.....Respondents

CORAM: *HON'BLE MR. JUSTICE RAJ MOHAN SINGH*

Present: Mr. Sakshi Saini Advocate for
Mr. HPS Ishar, Advocate,
for the petitioner.

Mr. Jagmohan Singh Ghumman, DAG, Punjab.

RAJ MOHAN SINGH, J.(Oral)

[1] Petitioner has assailed the order dated 30.11.2019 passed by Judicial Magistrate Ist Class, Patti, District Tarn Taran vide which the application moved by the petitioner for permission to cross examine the prosecution witnesses has been dismissed.

[2] Perusal of the record would show that vide order dated 03.09.2019, Judicial Magistrate Ist Class, Patti treated the cross examination of three witnesses to be 'Nil' and adjourned the case for remaining PWs. On 16.07.2019, the case was fixed for prosecution evidence. On that day, learned counsel for accused Gurjit Singh and learned counsel for accused Angrej singh

made a statement in the Court that witnesses namely Gurjant Singh, Amarjit Kaur and Massa Singh will be examined by them on the same day at the same time and the witnesses namely Gurdeep Singh, Gurmail Singh, Gurinder Singh, Sukhwinder Kaur and Sukhdeep Singh will be cross examined by the advocates at the same time. PW-Gurjant Singh was examined in chief on 26.08.2019 and his cross examination was deferred at the instance of learned counsel for the accused. Similarly, PW- Amarjit Kaur was examined on 16.07.2019 and PW-Massa Singh was examined in chief on 24.07.2019. Cross examination of all the aforesaid PWs were deferred at the instance of learned counsel for the accused. On 03.09.2019, all the three witnesses namely Gurjant Singh, Amarjit Kaur and Massa singh were present for their cross examinations at the instance of learned counsel for the accused. Learned counsel for both the accused stated before the Court that they will examine the aforesaid witnesses during post lunch session as they had to attend one cremation ceremony in pre-lunch session. In post lunch session, learned counsel for the accused Gurjit Singh cross examined PW-Massa Singh and left the Court without cross examining the remaining witnesses namely Gurjant Singh and Amarjit Kaur. Learned counsel for accused Angrej Singh did not appear even in post lunch session for cross examination of the witnesses. The Court waited for the advocates till 4.30 pm

and thereafter, cross examinations of all the witnesses were treated to be 'Nil' vide a detailed order dated 03.09.2019.

[3] Thereafter, petitioner filed an application for permission to cross examine the prosecution witnesses and the same has been declined vide the impugned order.

[4] Learned counsel for the petitioner submits that absence of the advocate on behalf of the petitioner for cross examination of PWs was not intentional and the omission, if any, on the part of the advocate be not credited in favour of the accused petitioner who may suffer heavily for not cross examining the prosecution witnesses.

[5] On the other hand, learned State Counsel states that owing to the conduct of the petitioner and his advocate, the petitioner be not granted any indulgence as they have already delayed the trial.

[6] I have considered the arguments of learned counsel for the parties and have also perused the material on record.

[7] The procedural law is meant to prevent failure of justice on account of mistake of either of the party to bring on record valuable evidence. It is not only the prerogative of the Court, but also a duty to examine such a witness as it considers necessary for doing justice between the parties. The consideration before the Court is to visualise as a determinative factor that whether the evidence in question is essential for just decision of the case

or not? The underlying principles were well defined in **Hanuman Ram vs. State of Rajasthan and ors., AIR 2009 SC 69.**

[8] In a criminal trial fair opportunity is required to be given to the accused to prove his innocence. Guilt of the accused has to be proved to the hilt. This is the object of every fair trial. The Court could adopt latitude and a liberal view in the interest of justice, particularly when the Court has unbridled powers in the matter as enshrined in Section 311 of the Code. The trial is basically for the accused and the Court should afford the opportunity to the accused in the fairest manner possible.

[9] The prayer of the petitioner is not such which would impede any cause of justice. At the most, truth will come to fore and that would serve as a material ground for prosecution as well as defence in the case. The object of fair trial has been highlighted in **Hoffman Andreas vs. Inspect of Customs, Amritsar (2000) 10 SCC 430.**

[10] In the instant case, the cross examination of prosecution witnesses in any case would advance the cause of justice. The technicality, if any, should not come in the way of substantial justice.

[11] Keeping in view the aforesaid principles, I am of the view that one opportunity needs to be granted to the petitioner for cross examining the prosecution witnesses. The petitioner is accused in case bearing FIR No.100 dated 23.10.2013 under

Sections 420, 506 and 120-B of IPC. For the delay caused by the petitioner, he would however, deposit a cost(s) of Rs.5000/- with the District Legal Services Authority, Tarn Taran. The payment of cost(s) shall be the condition precedent for granting indulgence in favour of the petitioner by the Trial Court. It is made clear that the failure on the part of the petitioner in not cross examining the PWs on the date fixed by the Trial Court, shall not enure any other further opportunity.

Petition stands disposed of.

March 16, 2020

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**(RAJ MOHAN SINGH)
JUDGE**

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No