

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

CRM-M-47067-2019(O&M)

Date of decision:-5.2.2020

Harcharan Singh

...Petitioner

Versus

State of Haryana and another

...Respondents

CORAM : HON'BLE MR. JUSTICE H.S. MADAAN

Present : Mr.Pratham Sethi, Advocate
for the petitioner.

Mr.Kuldeep Sharma, DAG, Haryana.

H.S. MADAAN, J.

This petition under Section 482 Cr.P.C. has been filed on behalf of petitioner Harcharan Singh seeking quashing of order dated 22.10.2019 passed by learned Additional Sessions Judge, Fatehabad in an application dated 15.10.2009 moved by the respondent No.2. The petitioner further prays that learned Additional Sessions Judge, Fatehabad be directed to pronounce the final judgment.

Notice in the petition was issued to the respondents. Respondent No.1 – State appeared through counsel. However, there was no representation on behalf of respondent No.2 despite service.

I have heard learned counsel for the petitioner and learned State counsel besides going through the record.

During the course of trial in case State Versus Shishpal and 14 others registered vide FIR No.45 dated 18.1.2011 for the offences under Sections 396, 216, 420, 120-B, 412, 201, 302, 148, 149 IPC and Section 25 of the Arms Act, the prosecution had filed an application for recalling PW32 ASI Ashok Kumar along with list of towers showing the location of accused with regard to their cell phones on 17.1.2011 and 18.1.2011. That application was allowed by the trial Court. Another application was moved by applicant/accused Dharampal submitting that PW14 Harcharan Singh was examined by the prosecution. Although his cross-examination is shown to have been conducted by learned counsel for all the accused but as a matter of fact he had been cross-examined on behalf of accused Shishpal only.

Learned trial Court has not given any sound reasoning for allowing application under Section 311 Cr.P.C. filed by Dharampal accused and has just observed that since the application for additional evidence filed by the prosecution for recalling of PW32 ASI Ashok Kumar had been accepted, on the ground of parity, the application by accused Dharampal was also accepted. This shows a very casual and non-serious way of dealing with an important matter of recalling a witness examined long back. The trial Court without recording its satisfaction that PW14 Harcharan Singh had in fact not been cross-examined on behalf of all the accused, has allowed request for his further cross-examination. The record shows otherwise. Copy of statement of PW14 Harcharan Singh recorded on 29.5.2013 goes to show that cross-examination of this witness had been conducted by Sh.B.S. Sharma, Advocate for accused Sunil @ Bacchi, Manoj and

Gaurav, Sh.Pranav Sandhir, Advocate for accused Shishpal, Sh.Sanjay Singh, Advocate for accused Ajmal Khan, Sh.J.M. Dhariwal, Advocate for accused Kalu Ram, Sh.G.P. Tarar, Advocate, proxy counsel for Sh.M.S. Nain, Advocate for accused Naib Singh and Mahesh, Sh.Subhash Karwasra, Advocate for accused Sant Lal, Dharampal @ Pallu Ram, Surender and Kallu @ Vijay and Sh.J.S. Rana, Advocate for accused Jiwan @ Jagbir and Charan Singh. It was wrong on the part of accused Dharampal to state that such witness had not been cross-examined on his behalf when the record is otherwise and it shows that several advocates representing various accused had cross-examined the witness. Cross-examination on behalf of accused Dharampal @ Pallu Ram had been conducted by Sh.Subhash Karwasra, Advocate.

Section 311 Cr.P.C. provides that any Court may, at any stage of any inquiry, trial or other proceeding under this Code, summon any person as a witness, or examine any person in attendance, though not summoned as a witness, or. recall and re- examine any person already examined; and the Court shall summon and examine or recall and re- examine any such person if his evidence appears to it to be essential to the just decision of the case.

The trial Court has not given any cogent and convincing reason for recalling PW14 Harcharan Singh and in a very unsatisfactory and strange manner has allowed the request to recall PW14 at the instance of accused Dharampal simply for the reason that an application moved by the complainant for additional evidence had been allowed. Important and crucial matters are not dealt with in such a casual and cursory manner allegedly for the reason he was not confronted with

improvement made in his previous statement Ex.P39.

Therefore, the present petition has got merit. The same is allowed. The impugned order with regard to recalling of PW14 Harcharan Singh for his further cross-examination is quashed. The trial in this case is lingering on since long and is stated to be at the stage of final arguments. The trial Court is directed to dispose of the case expeditiously refusing to grant adjournment without a very strong justifiable reason.

(H.S.MADAAN)
JUDGE

5.2.2020
Brij

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No