

207-A

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

CRR No.3451 of 2019

Date of Decision: 04.09.2020

Raj Kumar

.....Petitioner

Vs

State of Haryana

.....Respondent

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

Present: Mr. Kamal Deep Sehra, Advocate
for the petitioner.

Mr. Rajat Gautam, D.A.G., Haryana.

Mr. Ketan Antil, Advocate
for the complainant.

RAJ MOHAN SINGH, J.

The case has been taken up for hearing through video conferencing.

Petitioner has assailed the order dated 30.09.2019 passed by the Addl. Sessions Judge, Sonipat vide which the application under Section 311 Cr.P.C. moved by the petitioner was dismissed.

Petitioner sought to summon PW-1 Vikas Malik for further cross-examination after receipt of FSL report dated 10.05.2019. Examination-in-chief of PW-1 Vikas Malik was

recorded on 07.12.2018. On 11.12.2018, an application was moved for deferring the cross-examination of PW-1 Vikas Malik for want of FSL report. The said application was dismissed by the Court on 11.12.2018 after noticing that examination-in-chief of PW-1 was recorded on 07.12.2018 and cross-examination was deferred as the accused had submitted before the Court that their counsel was not readily available on 07.12.2018. The accused were directed to ensure presence of their counsel for 11.12.2018.

On 11.12.2018, an application was moved for deferring the cross-examination of PW-1 Vikas Malik, who was present for his cross-examination. The FSL report was not received at that time. The application was opposed by the public prosecutor on the ground that PW-1 Vikas Malik was receiving constant threats and the witness had also moved an application for providing adequate protection. The SSP, Sonipat and DSP Gohana were directed to provide adequate protection to the witness. The Court found that the application for deferring the cross-examination was filed just to delay the disposal of the case and also in order to get time till the witness agrees to become hostile. The application was dismissed vide order dated 11.12.2018.

Thereafter, application under Section 311 Cr.P.C. came

to be filed for summoning PW-1 Vikas Malik for further cross-examination. The Court found that against the order dated 11.12.2018 passed by the Addl. Sessions Judge, Sonipat, CRM-M No.18205 of 2019 was filed in the High Court which was dismissed. The Addl. Sessions Judge after recording some incriminating facts found that after receiving FSL report, fresh right would not accrue to the petitioner for further cross-examination of the witness already examined. The Court dismissed the application vide order dated 30.09.2019 against which CRR No.2865 of 2019 was filed in the High Court by the co-accused namely Krishan.

This Court vide order dated 27.11.2019 passed in CRR No.2865 of 2019 set aside the order dated 30.09.2019 passed by the trial Court and granted one effective opportunity to the petitioner therein to recall PW-1 Vikas Malik for further cross-examination limited to the extent of FSL report only. Cross-examination of PW-1 was ordered to be concluded in one date.

The present petition has been filed by second accused namely Raj Kumar. At the time of issuing notice of motion, learned counsel for the petitioner submitted that after receiving FSL report, Legal Aid Counsel ought to have been given seven days time to prepare the case for cross-examination of PW-1 on the strength of ratio of **Anokhilal vs. State of Madhya**

Pradesh, 2020(1) R.C.R. (Criminal) 502.

It is relevant to observe that in pursuance of order dated 27.11.2019 passed by the this Court in CRR No.2865 of 2019 granting one effective opportunity to the co-accused of the petitioner to recall PW-1 Vikas Malik for further cross-examination limiting to FSL report the witness has already been recalled for further cross-examination and needful has been done. The contention of learned counsel for the petitioner that Legal Aid Counsel ought to have given seven days time for preparing his cross-examination appears to be non-existent in view of order dated 19.12.2019 passed by the Addl. Sessions Judge, Sonipat, wherein it has been recorded that PW-1 Vikas had been recalled for further cross-examination limited to FSL report. Presence of Sh. Vikas Lathwal, Advocate and Sh.R.S. Dahiya, Advocate on behalf of the accused was recorded. There was no presence of Legal Aid Counsel in the aforesaid order dated 19.12.2019. When Legal Aid Counsel was not present, question of granting seven days time would not arise. Even otherwise after the order dated 27.11.2019 passed by this Court in CRR No.2865 of 2019, the witness had already been recalled on 19.12.2019. Even the regular Advocates had ample time to prepare the cross-examination of PW-1 in the light of order dated 19.12.2019 passed by the Addl. Sessions Judge, Sonipat.

It is true that at the time of deciding application under Section 311 Cr.P.C., the consideration before the Court is to visualize as a determinative factor that whether evidence in question is essential for just decision of the case or not. Though the Court has unbridled powers under Section 311 Cr.P.C., but the power cannot be used in favour of accused/petitioner, who has not come to the Court with clean hands, rather his sole aim is to delay the trial of the case so as to win over the witness.

In view of incriminating facts and circumstances of the case, I find no ground to interfere in the impugned order. This crl. revision petition is found to be totally devoid of merits and is accordingly dismissed.

September 04, 2020
Atik

(RAJ MOHAN SINGH)
JUDGE

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