

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

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**CRM-M-33910-2021 (O&M).
Date of Decision: 02.09.2021.**

Salauddin

....Petitioner.

Versus

State of Haryana

....Respondent.

CORAM: HON'BLE MR. JUSTICE LALIT BATRA

Present: Mr. Manish Soni, Advocate for petitioner.

Mr. Vikrant Pamboo, Deputy Advocate General, Haryana.

Lalit Batra, J.(Oral)

Case has been taken up for hearing through Video Conferencing.

CRM-27532-2021

Copy of application dated 22.07.2021 as well as copies of orders dated 22.07.2021 and 03.08.2021 (Annexures P/10 and P/11) are taken on record, subject to all just exceptions.

CRM is allowed.

CRM-M-33910-2021

This petition under Section 482 Cr.P.C. has been moved by petitioner-Salauddin for quashing of order dated 12.08.2021 (Annexure P/9) rendered by Additional Sessions Judge, Gurugram, in Sessions Case No.SC-626/19 dated 02.09.2019, titled 'State Vs. Salauddin', FIR No.413 dated 07.12.2017 under Section 379-B IPC (offence under Sections 201, 412, 420 and 489 IPC read with Section 34 IPC added lateron), Police Station Rajendra Park, Gurugram, in terms of which, defence evidence of petitioner

Learned counsel for the petitioner *inter alia* contends that final report under Section 173 Cr.P.C. (*Challan*) was presented before the Trial Court on 20.04.2018 against co-accused namely Vinod Kumar and Rakesh Kumar and on culmination of trial, co-accused Vinod Kumar was acquitted of the charges levelled against him, whereas though co-accused Rakesh Kumar was acquitted of charges under Sections 201, 379-B, 420 and 489 IPC read with Section 34 IPC, however, he (Rakesh Kumar) was convicted for commission of offence punishable under Section 392 IPC read with Section 397 IPC, vide judgment dated 29.09.2018 (Annexure P/2). He further urges that as far as petitioner is concerned, his name surfaced in the array of accused on the basis of disclosure statement of co-accused namely Rakesh Kumar and Vinod Kumar on the allegations that the ransacked vehicle was purchased by petitioner from them. He further urges that petitioner was wrongly got declared 'proclaimed offender' without proper service of warrants and in violation of provisions of Section 82 Cr.P.C. He further urges that petitioner was arrested on 17.06.2019 and offence under Section 412 IPC was added in the FIR and final report under Section 173 Cr.P.C. (*Challan*) was presented against the petitioner and on commencement of trial, thirteen prosecution witnesses have been examined by the prosecution against the petitioner. He further urges that after closure of prosecution evidence, statement of petitioner/accused as envisaged under Section 313 Cr.P.C. was recorded on 05.03.2021. He further urges that on 16.03.2021, petitioner had moved an application under Section 216 Cr.P.C. for alteration of charges, however, the said application was dismissed by the Trial Court, vide order dated 20.04.2021 (Annexure P/7) and the case was

pandemic, the case was taken up for hearing on 02.07.2021 and was adjourned to 16.07.2021 for defence evidence. He further urges that on 22.07.2021, an application for adducing evidence in defence was moved by the petitioner and a private witness namely Sajid son of Amir Ahmed, resident of Mohalla Munna Lal, Tehsil Mawana, District Meerut (UP) as mentioned in list of defence witnesses (Annexure P/10) was sought to be summoned, however, on 03.08.2021, Trial Court ordered that “summons of the defence witness be handed over to learned counsel for the accused to procure the service of witness” and the matter was adjourned to 10.08.2021. He further submits that on 10.08.2021 as the Presiding Officer was on leave, the matter was adjourned to 12.08.2021. He further submits that instead of securing the presence of defence witness through Process Serving Agency, appearance of defence witness was ordered at own responsibility of the petitioner. He further urges that on 03.08.2021, the case was adjourned to 10.08.2021, being last opportunity for leading defence evidence and further subject to deposit of costs of Rs.2000/- in District Legal Services Authority, Gurugram and ultimately the defence evidence was closed by Court order dated 12.08.2021 (Annexure P/9). He further urges that in view of circumstances, as detailed above, sufficient effective opportunities to examine the material witness in his defence were required to be accorded to the petitioner and evidence of above said witness is just and relevant for proper adjudication of the case. In support of his contention, learned counsel for the petitioner has relied upon **Rule 14 Chapter 1 Part-D Volume III of Punjab and Haryana High Court Rules and Orders**, which **Rule** is reproduced as under:-

*“14. **Defence witnesses and cost of summoning them.** - The Magistrate is bound to cause the production of and hear all witnesses whom the accused desires to call, and to consider any documentary evidence relied on by him. The only exception to this rule is where the Magistrate considers that in naming any witnesses the object of the accused is to cause vexation or delay or to defeat the ends of justice. In case the Magistrate refuses to receive any evidence required by the accused, he should record his reasons for such refusal in writing. In view of the proviso to sub-section (9) of Section 251-A of the Code, the attendance of a witness should not be compelled at the request of the accused where he has cross-examined or has had the opportunity of cross-examining the witness after the framing of the charge, unless the Magistrate is satisfied that it is necessary for the ends of justice.*

***Accused as a defence witness.** - In view of Section 342-A of the Code, as inserted by Act 26 of 1955, an accused may now appear as a witness for the defence and may give evidence on oath in disproof of the charges made against him or a co-accused. He cannot, however, be so examined except on his own request in writing and his failure to do so cannot be made the subject of any comment by the parties or the court or raise any presumption against him or a co-accused.*

The Magistrate may, before summoning any witness applied for by the accused, require the accused to deposit reasonable expenses for his attendance. In ordinary warrant-cases, however, the cost of causing the attendance of accused's necessary witnesses is usually borne by Government.”

Further, learned counsel for the petitioner has placed reliance upon decision of this Court in case '**Jit Singh alias Ranjit Singh Vs. The State**', Criminal Revision No.725 of 1961 decided on 17.11.1961, wherein

it was held that defence witness is to be summoned at State expense. He

further submits that witness-Sajid sought to be produced in defence of petitioner should have been summoned through due process by the Trial Court, whereas vide order dated 22.07.2021 (Annexure P/11), the said witness was ordered to be produced in the Court at own responsibility of petitioner/accused, therefore, impugned order is liable to be set aside.

On the other hand, learned State counsel while opposing the cause of petitioner has vehemently argued that petitioner/accused availed as many as sixteen opportunities and when he failed to lead any evidence in his defence, his evidence was rightly closed by Court order.

I have heard learned counsel for the petitioner and learned State counsel and carefully gone through the record of the case.

No doubt, as is evident from the impugned order dated 12.08.2021 (Annexure P/9), after conclusion of prosecution evidence and recording of statement of petitioner/accused as envisaged under Section 313 Cr.P.C., number of opportunities were granted to the petitioner/accused to lead his defence evidence and even costs of Rs.2000/- was imposed upon the petitioner. However, as per submission raised on behalf of petitioner, the witness sought to be produced in defence should have been summoned through Process Serving Agency and that too at State expense especially in view of the fact that petitioner/accused is languishing in custody since 17.06.2019.

Thus, considering the facts and circumstances of the case and further following cardinal principle of ***Audi Alteram Partem*** that no person should be judged without a fair hearing in which each party is given the opportunity to respond to the evidence against them, it is ordered that two

effective opportunities be granted by the Trial Court to the petitioner/

accused to lead defence evidence by examining defence witness-Sajid, as mentioned in list of witnesses (Annexure P/10) at State expense.

Accordingly, instant petition is allowed and order dated 12.08.2021 (Annexure P/9) is set aside.

(LALIT BATRA)
JUDGE

02.09.2021
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Whether speaking/ reasoned : Yes/ No
Whether Reportable : Yes/ No