

Mardana Singh

... Petitioner

v/s

State of Punjab

... Respondent

CORAM: HON'BLE MR. JUSTICE VIVEK PURIPresent: Mr. Manu K. Bhandari, Advocate
for the petitioner.

Ms. Ruchika Sabherwal, AAG Punjab.

*(The case has been taken up through video conferencing on
account of Covid-19 pandemic)*

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VIVEK PURI, J. (ORAL)**CRM-42736-2021**

Learned counsel for the petitioner seeks to place on record medical certificate pertaining to counsel for the petitioner in the Court below. The same is taken on record. Registry is directed to tag the same at the appropriate place.

Disposed of.

Main case

Petitioner has impugned the order dated 16.11.2021 passed by the learned trial Court vide which opportunity to cross-examine PW1-minor victim, PW2-minor victim and PW3 has been declined on account of non-appearance of counsel for the accused-petitioner.

The petitioner is facing trial for having committed the offence punishable under Section 354, 354-A of IPC and Section 8 and 12 of

Protection of Children from Sexual Offenses (POCSO) Act. The PW1 and PW2 are stated to be aged about 4 years and 3 years respectively. The perusal of the impugned order indicates that the examination-in-chief of the aforesaid three witnesses was recorded and the cross-examination was deferred for the post-lunch session on the request of the proxy counsel as the regular counsel had gone to the Doctor for getting some test conducted and it was assured that he will be available in the post-lunch session for the cross-examination of the witnesses. Accordingly, the matter was deferred till post-lunch session for the cross-examination of the witnesses. In the post-lunch session, the case was repeatedly called and at 3:00 P.M., proxy counsel put appearance and again requested for adjournment for the cross-examination of the witnesses on the ground that regular counsel was not available. The request was opposed by the learned Addl. P.P. as well as the mothers of both the victims who had expressed the difficulty in producing the daughters of tender age again and make them go through the agony. Accordingly, it was deemed inappropriate to defer the matter for cross-examination any further.

Learned counsel for the petitioner submits that counsel for the petitioner could not put appearance on account of health issues as is evident from the medical prescription dated 16.11.2021. The medical prescription indicates that there was complaint of giddiness and headache.

Learned State counsel is also present in pursuance of the advance notice and has opposed the prayer on the score that the minor victims will be put to great inconvenience if they are recalled for cross-examination.

It is no doubt true that two minor victims who are of extremely tender age are sought to be re-called but at the same time it has to be borne

in mind that fair opportunity of defence has to be afforded to the petitioner-accused particularly, because his counsel was suffering from some health issues. It shall not be out of place to mention here that in the pre-lunch session, a specific request was made that the counsel will be available in the post-lunch session and accordingly, the matter was deferred. Even in the post-lunch session, the matter was taken at 3:00 P.M. after repeated calls but the regular counsel was not available. In the post-lunch session, there was no specific request, on the score that the regular counsel is not available on account of some health constraints.

The recall of witnesses for the purpose of cross-examination appears to be essential for the just decision of the case.

Keeping in view the circumstances of the case, it is deemed appropriate that an effective opportunity is afforded to the accused-petitioner to cross-examine the aforesaid three witnesses. For the inconvenience which is likely to be caused to the victims, they can be compensated in terms of costs. As such, the present petition is allowed and the witnesses PW1, PW2 and PW3 are allowed to be recalled for the purpose of cross-examination by the petitioner-accused subject to the condition that the petitioner shall pay a sum of Rs. 15,000/- each to PW1 and PW2 through their mothers and a sum of Rs.5,000/- to PW3.

Disposed of in the aforesaid terms.

14.12.2021

Janki

(VIVEK PURI)
JUDGE

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