

CRM-33736 of 2021 in/and
CRM-M-46690 of 2019 (O&M)

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

CRM-33736 of 2021 in/and
CRM-M-46690 of 2019 (O&M)
Date of decision: 14.10.2021

Rajwant Kaur alias Rajwant Virk and others

.....Petitioners

Versus

State of Punjab

.....Respondent

**CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASHI
HON'BLE MR. JUSTICE ASHOK KUMAR VERMA**

Present: - Mr. Sanjay Kaushal, Sr. Advocate,
With Mr. Ishan Gupta, Advocate, for the applicant/petitioners.

Mr. S.P.S. Tinna, Addl. A.G., Punjab

ASHOK KUMAR VERMA, J.

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This is an application for preponement of hearing of the main case which is fixed for 06.01.2022.

For the reasons mentioned in the application, the same is allowed. Date of hearing of the main case is preponed and the same is taken on board for hearing today itself.

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1. Through this petition, petitioners-accused have assailed the order dated 03.08.2019 (Annexure P-7) passed by the learned Judge, Special Court, Jalandhar whereby the application of the petitioners for

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summoning defence witnesses during the stage of defence evidence of the accused, has been dismissed and vide separate order of the even date, defence evidence stood closed.

2. The brief facts as emanates from the paper-book are that the petitioners are facing trial in a case arising out of FIR No.60 dated 01.06.2012 registered at Police Station Kartarpur, Jalandhar, under Sections 22, 29, 25, 61 of the Narcotic Drugs and Psychotropic Substances Act, 1985. They were charge-sheeted on 17.01.2014 and prosecution closed its evidence on 24.08.2016. The petitioners filed an application dated 23.10.2018 for summoning defence witnesses. In the application, it has been alleged that the present case was investigated by PW1 Inspector Inderjit Singh who was dismissed from service by Sh.Sandeep Kumar Sharma, the then SSP Kapurthala vide order dated 15.06.2017 in the substantive rank of Head Constable. So he was not competent to investigate this case and thus to prove this fact, the accused petitioners wanted to examine the aforesaid the then SSP, Kapurthala. It has been further alleged that one challan arising out of FIR No.1 dated 12.06.2017 under Sections 59(2), 21, 22 of the NDPS Act, 25 of the Arms Act and 218, 466, 471, 384, 409, 120-B of the IPC, P.S. STF, SAS Nagar Mohali, Punjab titled as State vs. Inderjit Singh and others was filed in the Court of Special Judge, Mohali wherein accused have been charge-sheeted under the provisions of NDPS Act and the IPC. In the aforesaid case, statement of Jaswant Singh son of Surat Singh, retired DSP was recorded under Section 161 of the Cr.P.C. by Shri Mukhwinder Singh Chhina, AIG-SFT Jalandhar on 08.07.2017 in which a reference was made with regard to Inderjit Singh holding the rank of Head Constable and as such not

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competent to investigate the case. In order to prove that statement, the petitioners-accused wanted to examine aforesaid Mukhwinder Singh Chhina and Jaswant Singh. The aforesaid application has been dismissed by the trial court vide impugned order dated 03.08.2019 and vide separate order of even date, their evidence was closed by order.

3. Learned Senior Counsel for the petitioners, *inter alia*, submits that the trial court has grossly erred in dismissing the petitioners' application for summoning defence witnesses and wrongly closed their evidence thereby denying the petitioners to prove their innocence. Evidence of the aforesaid witnesses sought to be summoned was necessary for just decision of the case and fair trial to the accused petitioners. The right of the petitioners-accused to lead defence evidence of his choice cannot be thwarted on the flimsy presumption that the petitioners are delaying the decision of the case. Learned Sr. Counsel further submits that the purpose of summoning the said witness- the then SSP, Kapurthala was to prove that the Investigating Officer Inderjit Singh who was dismissed from service later on, was not competent to investigate the NDPS cases as he was holding the substantive rank of Head Constable whereas only the officers of and above the rank of Assistant Sub Inspector of Police is competent to conduct the investigation as per Notification dated 03.09.1987. In support of his submission, learned Sr. Counsel relies on a judgment of the Supreme Court in Gurjant Singh @ Janta vs. State of Punjab, 2013 (4) RCR (Criminal) 874 and a Division Bench Judgment of this Court in Bikkar Singh vs. State of Punjab 2006 (3) RCR (Criminal) 16. Learned Sr. Counsel also submits that the trial court erred in not considering the object of Section 311 of the Cr.P.C. which empowers a

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court to summon and examine or re-call and re-examine any such person if his evidence appears to it to be essential to the just decision of the case. Learned Sr. Counsel vehemently argues that the aforesaid defence witnesses are necessary for just decision of the case. In support of his submission, he relies on Rajaram Prasad Yadav vs. State of Bihar and another, 2013 (3) RCR (Criminal) 726.

4. *Per contra*, learned counsel for the State submits that the application of the petitioners was only an device to protract the proceedings of the case and the witnesses sought to be summoned as defence evidence were not necessary for just decision of the case. Learned counsel for the State further submits that the petitioners were given as many as 35 opportunities to lead defence evidence but they failed to complete their evidence. Learned counsel for the State also submits that the relevant questions which the petitioners want to ask from the additional defence witnesses, have already been asked from DW-Sukhwinder Kaur, Clerk from the office of Senior Superintendent of Police, Kapurthala. The aforesaid additional witnesses are not necessary for the purpose of just decision of the case and therefore, the application of the petitioners for summoning additional defence witnesses has rightly been dismissed by the Trial Court.

5. We have considered the submissions made by learned counsel for the parties. We are not inspired by the submissions of the learned Senior Counsel for the petitioners-accused. Before adverting further, it would be worthwhile to reproduce the relevant provisions of Section 233 of the Cr.P.C. which deals with entering upon defence evidence. The same

reads as under:-

“233. Entering upon defence

- (1) Where the accused is not acquitted under section 232, he shall be called upon to enter on his defence and adduce any evidence he may have in support thereof.*
- (2) If the accused puts in any written statement, the Judge shall file it with the record.*
- (3) If the accused applies for the issue of any process for compelling the attendance of any witness or the production of any document or thing, the Judge shall issue such process unless he considers, for reasons to be recorded, that such application should be refused on the ground that it is made for the purpose of vexation or delay or for defeating the ends of justice.*

6. A careful perusal of aforesaid Section 233(3) of the Cr.P.C. makes it explicitly clear that if the accused applies for the issue of any process for compelling the attendance of any witnesses or the production of any document or thing, the Court is supposed to issue such process unless it considers for reasons to be recorded, that such application should be refused on the ground that it is made for the purpose of vexation or delay or for defeating the ends of justice. It is settled proposition of law that an accused has a right to lead evidence of his choice necessary for the case, but this cannot be exercised with a view to delay and protract the decision of the case or to defeat the ends of justice. Such a prayer can always be turned down by the court, if it is found to be vexatious.

7. In the present case, the trial court came to the conclusion that the petitioners filed the application for summoning the additional defence witnesses only to delay the proceedings and to defeat the ends of justice as

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they availed as many as 35 opportunities and have already consumed about three years, to lead their defence evidence but despite that they failed to complete their evidence. The trial court further came to the conclusion that the petitioners-accused have already examined DW-Sukhwinder Kaur from the office of Senior Superintendent of Police, Kapurthala, who has proved the dismissal of Inspector Inderjit Singh, Investigating Officer of the present case, from his service record. All the relevant questions qua the rank and dismissal of Inspector Inderjit Singh have already been asked from her. Thus, to prove dismissal and rank of Inspector Inderjit Singh, examination of S.K. Sharma, the then S.S.P., Kapurthala was not necessary. As far as examination of other two witnesses, namely, Jaswant Singh son of Surat Singh and Mukhwinder Singh Chhina, AIG-STF is concerned, they are admittedly prosecution witnesses in case FIR No.1 dated 12.06.2017 under Sections 59(2), 21, 22 of the NDPS Act, Section 25 of the Arms Act and Sections 218, 466, 471, 384, 409 and 120-B IPC at Police Station STF, SAS Nagar, Punjab. Trial of that case is still pending and these witnesses have no connection with the present case. Therefore, examination of these proposed additional defence witnesses is not necessary for just decision of the present case and the application was filed by the petitioners-accused only to delay the decision of the case. Therefore, the aforesaid judgments relied upon by the learned Sr. Counsel for the petitioners are not applicable to the facts and circumstances of the present case.

8. While dealing with same type of controversy in **Arivazhagan v. State**, (2000)3 SCC 328, the Hon'ble Supreme Court held as under:-

“17. The purpose of furnishing a list of witnesses and documents to the court before the accused is called upon to enter on his defence is to afford an occasion to the court to peruse the list. On such perusal, if the court feels that examination of at least some of the persons mentioned in the list is quite unnecessary to prove the defence plea and the time which would be needed for completing the examination of such witnesses would only result in procrastination, it is the duty of the court to shortlist such witnesses. We may also add that if the court feels that the list is intended only to delay the proceedings, the court is well within its powers to disallow even the whole of it.”

9. In this view of the matter, we are of the considered opinion that it is always a bounden duty and obligation on the court to counterpoise any effort to unjust and unnecessarily delay and protract the decision of a case. The petitioners cannot be permitted to circumvent the process of the court for speedy decision by availing as many as 35 opportunities to lead defence evidence and by taking about three years for this purpose. Speedy decision of a case is hallmark of judicial system and the same cannot be dragged on for years by filing vexatious application for calling unnecessary witnesses. The irony is that such type of interlocutory application(s) plays a lead role in delaying the decision of a case which can always be turned down by the trial court on the ground that it is made for the purpose of vexation or delay or for defeating the ends of justice. As such the trial court has rightly acted by passing the impugned order(s) dated 03.08.2019

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dismissing the application of the petitioners for leading additional defence witnesses.

10. In view of the above, we find no merit in this petition which is accordingly dismissed. Consequent upon dismissal of the main petition, application(s), if any, pending shall stand disposed of accordingly.

(ASHOK KUMAR VERMA) (AUGUSTINE GEORGE MASIH)
JUDGE JUDGE

14.10.2021
MFK

Whether speaking/reasoned	Yes
Whether Reportable	Yes