

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

202

CRM-M-567-2019 (O&M)
Date of Decision: 08th April, 2022

RAJIV KUMAR @ RAJU & ANR

... Petitioners

Versus

STATE OF PUNJAB

... Respondent

CORAM: HON'BLE MR. JUSTICE VINOD S. BHARDWAJ

Present: Mr. Balbir Singh Jaswal, Advocate,
for the petitioners.

Ms. A.K. Khurana, DAG, Punjab.

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VINOD S. BHARDWAJ, J. (ORAL)

The instant petition has been filed under Section 482 of the Cr.P.C. seeking quashing of order dated 19.12.2018 passed by the Addl. Sessions Judge, Amritsar (Annexure P-4) in the proceedings arising out of FIR No.47 dated 29.02.2016 under Sections 323, 394, 307 and 34 of IPC and 25/57/54/59 of Arms Act, 1959, registered at Police Station: Sultanwind, Amritsar, whereby the application filed by the petitioners under Section 311 of the Cr.P.C. with a prayer to cross-examine the PW-7, namely, ASI Parveen Kumar has been dismissed.

Learned counsel appearing on behalf of the petitioners has assailed the order passed by the Trial Court by making reference to the document (Annexure P-3), which is a resolution passed by Amritsar Bar Association dated 12.11.2018 directing the members of the Bar Association to observe 12.11.2018 as 'non-working day' on account of the protest

against the negligence of doctors resulting in death of father of an advocate. It is contended that the said date was fixed for recording the evidence of prosecution and PW-7, namely, ASI Parveen Kumar No.2296/ASR had appeared before the Trial Court. His examination-in-chief was recorded, however, as the advocates had abstained from work, the cross-examination of the said witness was recorded as 'nil'. The said ASI is a witness to the proceedings of police conducted during the investigation and, thus, is a crucial witness. Failure to cross-examine the said witness on account of circumstances beyond the control of petitioners is likely to cause grave prejudice to the petitioners. It was for the said reason that the application under Section 311 of the Cr.P.C. was moved by the petitioners, and that too, without any delay. The Trial Court has, however, dismissed the said application by placing reliance upon the judgment of the Hon'ble Supreme Court passed in the matter of **Common Cause reported as 2005(4) RCR (Crl.) 344**.

Ms. A.K. Khurana, DAG, Punjab, who is present in Court, submits that there is no illegality or infirmity in the order so passed and that the absence of the counsel cannot be regarded as a valid basis to find an error in the order passed by the Trial Court.

I have heard the learned counsel for the parties and have gone through the record.

There is no dispute with respect to the proposition of law laid down by the Hon'ble Supreme Court in the matter of **Common Cause reported as 2005(4) RCR (Crl.) 344** wherein it is held that an adjournment

cannot be granted solely on the ground that Bar Association has taken a decision to abstain from work without any cogent reason. But, at the same time, notice has to be taken of the fact that the petitioners-accused are the actual victims of the order so passed by the Trial Court. It cannot be assumed that the cross-examination of the said prosecution witness could not have been done on account of any act or omission attributable to the petitioners. The provisions of Section 311 of the Cr.P.C. are meant to secure the ends of justice and the procedural laws are handmaiden to the interest of justice. An apparent prejudice, caused to a person by an act or omission beyond the control of said person should, not ordinarily be allowed to perpetuate and once a reasonable and satisfactory explanation has been furnished by an accused, the effect thereof must be mitigated to secure the ends of justice.

Hence, with a view to balance equities and to secure ends of justice, and taking into consideration the severe prejudice likely to be caused to the petitioners, as also the fact that the proceedings have remained stayed before the Trial Court since January 2019 on account of an interim order passed by this Court and to ensure the expeditious decision in the matter, the instant petition is allowed. Accordingly, the order dated 19.12.2018 (Annexure P-4) passed by the Additional Sessions Judge, Amritsar is set aside. The petitioners shall be granted one effective opportunity to cross-examine PW-7, ASI Parveen Kumar, No.2296/ASR, subject to payment of Rs.10,000/- as costs to the District Legal Services Authority, Amritsar.

At this stage, it has been informed that the case is already fixed for 25.04.2022 before the Trial Court. The parties shall appear before the Trial Court on the said date, whereupon the date for cross-examination of the said prosecution witness shall be determined by the Trial Court.

Interim order dated 10.01.2019 also stands vacated accordingly.

(VINOD S. BHARDWAJ)
JUDGE

08.04.2022
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Whether speaking/reasoned : **Yes/No**

Whether reportable : **Yes/No**