

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

CRM-M-8271-2022

Date of Decision : April 22, 2022

Shamun		Petitioner
	Versus	
State of Haryana and another		Respondent

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: Ms. Asiya, Advocate for
Mr. S.K. Daaria, Advocate
for the petitioner.

Mr. Deepak Kumar Grewal, DAG, Haryana.

ARVIND SINGH SANGWAN, J.

Prayer in this petition is for setting aside the impugned order dated 4.2.2022 passed by the Sessions Judge, Gurugram in the case of SC/568/2021 in FIR No.204 dated 17.6.2021 under Sections 364/364-A/392/394/34 IPC, registered at Police Station City Sohna, Gurugram, vide which the application of the petitioner for recalling the six prosecution witnesses already recorded by the trial Court and to allow him further cross-examination, was declined.

Counsel for the petitioner submits that the petitioner is facing trial in the aforesaid FIR registered by one Ravi Kant, who stated that he has taken a taxi for going to Palwal and in the meantime, the driver of the car took the vehicle towards Palwal and stopped near a village and snatched the ATM Card and the petitioner and co-accused Junaid demanded Rs.50,000/- as ransom.

6. The learned Public Prosecutor for the respondent-State has controverted the above mentioned arguments on the ground that proper opportunity was afforded to the counsel for the applicant/accused and that with *malafide* intentions the instant application has been filed, with a motive to cause delay. The learned Public Prosecutor has also argued that the right to defend himself available to the applicant/accused, has already been enjoyed by him and that recalling of prosecution witnesses for further cross-examination will tantamount to harassment of the victim, viz-a-viz other prosecution witnesses. On the above mentioned grounds the learned Public Prosecutor has sought for dismissal of the above mentioned application.

7. I have given my due consideration to the facts and circumstances of the case, the above mentioned arguments and the relevant record. The record has also been perused carefully.

8. At the very outset it is relevant to mention here that the instant trial is at its fag end, as the entire prosecution evidence viz-a-viz the statements of accused, have already been recorded.

9. There cannot be a denial of the fact that right to defend himself in a criminal trial is one of the most valuable and fundamental right of an accused. It is also settled law that any trial without affording an opportunity to the accused to defend himself is not a valid trial. However, the relevant question to be determined by this Court while deciding the above

mentioned application is; as to whether the applicant/accused is entitled to draw any benefit of the above mentioned legal propositions of law or not.

10. In my opinion, for the determination of above mentioned query it has to be seen as to whether at the time of cross-examination of prosecution witnesses proper opportunity for cross-examination of witnesses was afforded to the counsel for the applicant/accused or not.

11. A perusal of record shows that at the time of recording of testimonies of prosecution witness the applicant/accused had not engaged any counsel and therefore, on the request of the applicant/accused a Legal-Aid-Counsel from the panel of District Legal Services Authority, Gurugram was made available to the applicant/accused. The above said Legal-Aid counsel Shri Sunil Sharma, Advocate, was present through out of the conduct of the trial, i.e. at the time of examination of prosecution witnesses. At that stage, opportunity was afforded to the above named Legal-Aid Counsel to cross-examine the prosecution witnesses and he availed the above mentioned opportunity.

12. In view of the above mentioned circumstances, in my opinion, this plea of the applicant/accused has got no force that proper opportunity to defend himself was denied to him. In my considered opinion simply because the former counsel appearing for the applicant/accused was from the panel of Advocates, being maintained by the District Legal Services

Authority, Gurugram, does not mean that by engaging a new counsel a right has accrued to the applicant/accused to seek further cross-examination of prosecution witnesses. In my opinion, it will amount to unnecessary harassment of the victim as well as the prosecution witnesses.

13. As a sequel to above mentioned observations, in my considered opinion, once the applicant/accused has failed to establish that he was not properly represented or defended during the course of cross-examination of the prosecution witnesses, the only and only inference which can be drawn is that no ground to recall the prosecution witnesses, for further cross-examination is made out. Hence, I hold that the present application is devoid of merits and deserves dismissal. The same is hereby dismissed accordingly."

Counsel for the petitioner has submitted that, in fact, the petitioner could not ask them the relevant question regarding test identification parade of the petitioner to the concerned witnesses and as to how the petitioner was identified by the complainant. Counsel for the petitioner has further submitted that the petitioner wants to further cross-examine the complainant to ask who had given beatings to him and tied his hands and legs and who has snatched his ATM Card.

Learned State counsel has placed on record the photocopy of the deposition of ASI Mahavir Singh, who has appeared as PW3 as well as complainant-Ravi Kant, who appeared as PW5. A perusal of both the statements would reveal that after recording the examination-in-chief, Sunil Sharma, Advocate, who was the Legal-Aid counsel for the petitioner and Vipin Gupta, Advocate, who was the counsel for co-accused Junaid have cross-examined both these witnesses at length.

A perusal of the statement of complainant show that he has identified the petitioner and other accused as the assailant, however, this witness was cross-examined at length.

After hearing counsel for the parties, I find that the only ground taken by the petitioner that he has changed his counsel and want to recall the witnesses as he is not satisfied with the cross-examination. On perusal of the two statements which are taken on record as Mark 'X', it is found that the cross-examination has been conducted at length by the two separate counsel representing the two accused and co-accused Junaid has not raised any objection that he had filed any such application that no prior cross-examination of these witnesses was done.

Therefore, I find no merit in the present petition and the same is dismissed.

April 22, 2022
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(ARVIND SINGH SANGWAN)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No