

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

273

CRM-M-15636-2021
Decided on : 26.05.2022

Manjeet

. . . Petitioner

Versus

M/s Haryana Beej Bhandar

. . . Respondent

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

PRESENT: Mr. Susheel Gautam, Advocate
for the petitioner.

Mr. B. S. Saroha, Advocate
for the respondent.

VIKAS BAHL, J. (Oral)

This is a petition filed under Section 482 Cr.P.C. praying for quashing of the order dated 02.02.2021 vide which the application filed by the present petitioner for recalling the complainant/CW-1 Devender Singh for cross-examination has been dismissed.

Challenge is also the order dated 09.03.2021 vide which the revision petition filed by the petitioner against the said order has also been dismissed.

On 20.04.2021, a coordinate Bench of this Court was pleased to pass the following order:-

“Case heard via video conferencing.

*On 08.04.2021 the following order had been
passed by this court:-*

“Learned counsel for the petitioner

submits that, undoubtedly, the counsel for the petitioner had earlier cross-examined the witness (CW-1, as sought to be re-examined before the trial Court), at length on different dates; however, information sought by the petitioner under the provisions of the Right to Information Act, 2005, was received by him on 23.03.2021, stating therein that in fact, the respondent (M/s Haryana Beej Bhandar), was not authorized to sell the fertilizers and pesticides in question.

He next points to paragraph 2 of the complaint filed by the respondent (Annexure P-2), to submit that the petitioner, being the owner of only 5 acres of land (with no land taken by him on lease), could not have purchased pesticides to the tune of Rs.21 lakh approx. and consequently, cross examination of the complainant on that aspect is necessary.

On a query as to why such cross examination was not conducted over a period of three days earlier as has been mentioned in the impugned order of the Revisional Court, he submits that due to the mistake of his counsel (since changed), the petitioner should not suffer a miscarriage of justice.

Notice of motion, returnable on 20.04.2021. Dasti only, with liberty to serve the complainant through his counsel before the court below.

To be shown in the urgent motion list.”

The report of the Registry is to the effect that neither the notice issued by ordinary process nor the dasti notice issued has been received back either served or otherwise.

Learned counsel for the petitioner on the other hand submits that in fact the dasti notice had been served on the respondent but the process server had refused to hand over a copy of the dasti notice to the petitioner stating that it was his (process servers') responsibility to ensure that it was returned to the high court. However, as said, the notice has not been received back in any form, in the High Court.

The District Judge, Panipat, is directed to enquire into the matter and to send his report with regard to the above contention of counsel for the petitioner, before the next date of hearing.

Adjourned to 11.05.2021.

In the aforesaid circumstances, without making any comment on the correctness of the contention raised or otherwise, the trial court is directed to adjourned the matter to a date beyond that given by this court till the next date of hearing only and specifically. To be shown in the urgent motion list.”

Learned counsel for the petitioner has submitted that in the present case, material questions were sought to be asked from the said CW-1 based upon the information which was received by the petitioner under the Right To Information Act on 23.03.2021 i.e. after the examination and cross-examination of CW-1. Learned counsel for the petitioner has relied upon a judgment of the Delhi High Court reported as **2015 (7) RCR (Criminal) 1034** titled as ***Shiv Kumar Yadav Vs. State*** to contend that the Court is under obligation to ensure a fair trial which includes the grant of fair and proper opportunity to the accused. It is further submitted that no valid reason has been given in the impugned order for dismissing the said application.

Learned counsel appearing for the respondent has submitted that since the complainant has nothing to hide, thus, he has no objection in case the present petition is allowed and the complainant CW-1 is recalled for cross-examination.

Learned counsel for the petitioner has even referred to an application i.e. CRM-15141-2022 filed by the complainant which is supported by the affidavit of the complainant to the effect that he has no objection in case the main petition is allowed subject to payment of cost.

This Court has heard learned counsel for the parties and has perused the paperbook.

It is the case of the petitioner that he moved an application for recalling CW-1 for cross examination. It was argued by learned counsel for the petitioner, as has been noticed in the order dated 20.04.2021, that relevant information had been obtained by the petitioner under the Right To Information Act on 23.03.2021 and on the basis of the said information, the relevant questions were to be put the complainant CW-1, who had already been examined and cross examined earlier. In support of the argument that even after recording of the statement under Section 313 Cr.P.C., an application under Section 311 Cr.P.C. can be moved, learned counsel for the petitioner has relied upon the judgment of the Delhi High Court in *Shiv Kumar Yadav (supra)*. The complainant-respondent in the present case has moved an application i.e. CRM-15141-2022, the relevant portion of which is

reproduced hereinbelow:-

“3. That at this stage the present respondent/ complainant has no objection if this petition filed by the Accused - Petitioner may kindly be allowed and he may be permitted to re-examine the Present Respondent i.e. CW-1 (Complainant before the Ld. Trial Court) subject to payment of cost.

4. That though, the Accused Petitioner had already availed the three ample opportunities but he had not done necessary well in time. But without going into any controversy in this present petition, the respondent has no objection if the same may kindly be allowed with cost and the Trial of the case may kindly be time framed and the Trial of the case may kindly be expedited.

5. That this Hon'ble Court may be pleased to pass any other order or direction as it might deem fit and proper in the peculiar facts and the circumstances of this case.”

The said application is supported by the affidavit of said Devender Singh.

Keeping in view the abovesaid facts and circumstances, moreso, the stand of the complainant and also the fact that as per the case of the petitioner, certain relevant questions need to be put to CW-1, the present petition is allowed and the impugned orders dated 02.02.2021 and 09.03.2021 are set aside and the application filed by the petitioner for recalling CW-1 for cross examination is allowed, subject to the petitioner depositing an amount of Rs.10,000/- as costs within a period of one week from today and the trial Court is directed to release the said amount to the complainant.

Learned counsel for the respondent has submitted that CW-1 Devender Singh would appear on the next date of hearing before the trial Court and in view of the same, learned counsel for the petitioner is directed to cross-examine the said CW-1 on the said date itself or on one further date thereafter.

It is made clear that the petitioner would only be granted an opportunity to cross-examine the said CW-1 on the said two dates.

The trial Court is also directed to complete the cross-examination of CW-1 on the next date of hearing or on one date thereafter. Since, the complaint is pending since 2017, thus, the trial court is directed to decide the main case as expeditiously as possible.

The petitioner and the complainant are also directed to fully cooperate with the trial Court in deciding the matter as expeditiously as possible.

Accordingly, the present petition is disposed of with the abovesaid observations.

However, it is made clear that in case, the said amount of Rs.10,000/- is not deposited within the stipulated period of one week, then the present revision petition would be deemed to have been dismissed.

(VIKAS BAHL)
JUDGE

26.05.2022

Mehak

Whether reasoned/speaking?
Whether reportable?

Yes/No
Yes/No