

**IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH.**

CRM-M-44607-2018

Date of Decision:-15.11.2022

Karnail Singh & Anr.

.....Petitioners.

Vs.

State of Punjab & Anr.

.....Respondents.

CORAM:- HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present:- Mr. Parveen Kumar Garg, Advocate for the Petitioners.

Mr. Kirat Singh Sidhu, Deputy Advocate General, Punjab.

Mr. Rajnikant Upadaya, Advocate for respondent no.1.

JASJIT SINGH BEDI, J.(ORAL)

The prayer in the present petition under Section 482 Cr.PC is for quashing of the orders dated 25.09.2018 (Annexures P-2 & P-4) passed by the Trial Court in Complaint Case bearing COMI No.1586 of 2013 dated 3.8.2021 under Sections 323, 324, 326, 506 and 34 IPC whereby the defence evidence has been ordered to be closed and an application moved by the petitioners/accused for an adjournment to examine Sukhwinder Singh in defence has been rejected.

2. The brief facts of the case are that an FIR No.57 dated 24.5.2011 under Sections 324, 323, 34 IPC came to be registered against the petitioners and after a detailed investigation a cancellation report was submitted in Court.

3. Subsequently, on the same set of allegations the complainant/respondent no.2 instituted the complaint against the petitioners

under Sections 307, 326, 324, 323, 34, 506 IPC. A Copy of the complaint is attached as Annexure P-1 to the petition.

4. After the closure of the prosecution evidence and recording the statements of the petitioners under Section 313 Cr.PC, three witnesses in defence were examined and various documents including those documents pertaining to litigation between the parties were brought on record.

5. On 11.09.2018 the Trial Court adjourned the case to 25.09.2018 stating in the order that this would be the last and final opportunity for adducing defence evidence failing which the defence evidence would be closed.

6. On 25.09.2018 DW-Gurdev Singh, DSP was examined and certain documents were tendered. Another adjournment was sought for the remaining defence evidence. However, the same was declined and the defence evidence was ordered to be closed by order. Copy of the said order dated 25.09.2018 is attached as Annexure P-2 to the petition.

7. On the very same day an application was moved for an adjournment on the ground that one Sukhwinder Singh son of Ajaib Singh was to be examined in defence but on account of the illness of his wife he was unable to come to Court on that date. Copy of the application dated 25.09.2018 is attached as Annexure P-3 to the petition. The Trial Court after hearing the parties declined the prayer for adjournment on the ground that various opportunities including various last opportunities and special opportunities had been granted to the accused/petitioners for leading their defence evidence. Therefore, the Court did not find any reason to allow the application for adjournment thereby providing yet another opportunity to the petitioners/accused to examine Sukhwinder Singh as DW. A Copy of the said order dated 25.09.2018 is attached as Annexure P-4 to the petition.

8. Both the aforementioned orders are impugned in the present petition.

9. The Counsel for the petitioner contends that the Court ought to have granted one more opportunity to the petitioners to lead their defence evidence as they sought to examine Sukhwinder Singh being a material witness. He had got recorded his statement with the police authorities in the above referred case and therefore his deposition was essential. Even otherwise no prejudice would be caused to the respondent/complainant in

case the said Sukhwinder Singh was allowed to be examined as a DW. He thus contends that the impugned orders are not sustainable in the eyes of law and were liable to be set aside in the interest of justice and one effective opportunity ought to be granted to the petitioners to examine the said witness Sukhwinder Singh in their defence.

10. The Counsel for the complainant/respondent no.2 on the other hand contends that the complaint was filed on 02.07.2011. It was only after 07 years that the defence evidence was closed vide order dated 25.09.2018 (Annexure P-2) and that too after numerous opportunities including various last and special opportunities had already been granted to the petitioners to lead their evidence. He contends that since the statement of Sukhwinder Singh had been recorded by the investigating agency during the course of investigation, the petitioners were aware that he was a witness and, therefore, ought to have examined him much earlier. He contends the moving of this application is nothing but a ploy to delay the proceedings. Even otherwise, it has not been clarified in the application Annexure P-3 as to why the said Sukhwinder Singh is to be examined and what would be relevance of his testimony. He thus contends that the well reasoned impugned orders are not liable to be set aside and the present petition is liable to be dismissed.

11. I have heard learned Counsel for the parties at length.

12. A perusal of the record would reveal that complaint was instituted on 02.07.2011. Various opportunities were granted to the accused/petitioners to lead their evidence in defence. However, for the reasons best known to them, they chose not to examine Sukhwinder Singh as a defence witness. It was only later when the defence evidence stood closed vide order dated 25.09.2018 (Annexure P-2) that an application (Annexure P-3) dated 25.09.2018 was moved for an adjournment to examine Sukhwinder Singh as a DW. It would be pertinent to mention here that the said Sukhwinder Singh was a witness as per police investigation and, therefore, the accused were aware of his status as a witness. Therefore, they ought to have examined him if they thought this evidence was relevant. Further, a perusal of the application for adjournment (Annexure P-3) does not reveal as to why the said Sukhwinder Singh was to be examined as a DW and what would be the relevance of his testimony.

13. In view of the aforementioned discussion, I see on infirmity in the orders Annexure P-2 & P-4 (both dated 25.09.2018) and therefore, the present petition is hereby dismissed.

(JASJIT SINGH BEDI)
JUDGE

November 15, 2022
Vinay

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