

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

**CRM-M-45005-2017
Date of Decision:17.05.2022**

Ravi Kumar

... Petitioner

Versus

State of Punjab

... Respondent

CORAM: HON'BLE MR. JUSTICE KARAMJIT SINGH

Present:- Mr. Vaneet Sharma, Advocate
for the petitioner.

Ms. Samina Dhir, DAG, Punjab.

KARAMJIT SINGH, J.

The present petition has been filed by the petitioner seeking setting aside the order dated 12.07.2017 (Annexure P-2) passed by ADJ, Amritsar in case FIR No.351 dated 27.09.2014 under Section 15 of NDPS Act, PS Civil Lines, Amritsar, vide which the application filed by the petitioner (accused) under Section 311 Cr.P.C was dismissed.

The brief facts of the case are that the petitioner is facing trial in the aforesaid case. During trial prosecution examined PW ASI Vinod Kumar and Inspector Sukhwinder Singh. The petitioner failed to cross-examine both the said PWs despite being given opportunity to do so and finally their cross-examination on behalf of the petitioner was directed to be treated as 'nil'. Being aggrieved the petitioner filed an application under Section 311

Cr.P.C for recalling PW ASI Vinod Kumar and PW Inspector Sukhwinder Singh, for their cross-examination. However, the said application was declined by the trial Court vide impugned order dated 12.07.2017, Annexure P-2.

I have heard the counsel for the petitioner as well as State Counsel.

Every accused and victim have a right to a fair trial by a competent court in the spirit of the right to life and personal liberty. A fair trial also includes right of the accused to defend himself. The right to be defended by a legal practitioner flowing from the Constitution has further been fortified by the introduction of the Directive Principles of State policy embodied in Article 39A of the Constitution and enactment of Sub-Section 1 of Section 304 of Cr.P.C. Legal assistance to the accused facing trial whose life and personal liberty is in jeopardy is mandated by the aforesaid statutory provisions.

In the case in hand it appears that the petitioner was represented by his private counsel but the said counsel was not willing to cross-examine the aforesaid PWs for the reasons best known to him, despite the fact that he was given opportunity to cross-examine them by the Trial Court. Finally, the trial Court treated the cross-examination of both the said PWs as 'nil'.

This Court is of the view that the aforesaid procedure followed by the trial Court is against the mandate of statutory provisions as has been discussed above. When the defence counsel showed his reluctance to cross-examine PW ASI Vinod Kumar and PW Inspector Sukhwinder Singh, the trial Court should have immediately given directions to provide legal aid

counsel to the petitioner(accused) at the State expenses or appointed amicus curiae, even if no such request in writing was made by the petitioner (accused) to provide him legal aid counsel. The Trial Court vide the impugned order, deprived the petitioner(accused) of his valuable right to cross-examine the prosecution witnesses, while totally ignoring the statutory mandate under Article 39A of the Constitution and Section 304 Cr.P.C.

In the light of the above, the present petition is hereby allowed and the impugned order dated 12.07.2017, Annexure P-2, passed by the trial Court is set aside and the application filed by the petitioner under Section 311 Cr.P.C. stands allowed. The Trial Court is directed to give one more effective opportunity to the petitioner(accused) to cross-examine PW ASI Vinod Kumar and PW Inspector Sukhwinder Singh. For that purpose, the trial Court should summon PW ASI Vinod Kumar and PW Inspector Sukhwinder Singh for a particular date to be fixed by it after the next date already fixed in the trial Court. In case the petitioner(accused) remains unrepresented the trial Court shall assign a legal aid counsel to him so that the petitioner (accused) is able to cross-examine the aforesaid PWs without any delay.

Disposed of accordingly.

17.05.2022
P. Chawla

(KARAMJIT SINGH)
JUDGE

Whether reasoned / speaking? Yes / No

Whether reportable? Yes / No