

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH.

204

CRM-M-45133-2017
Date of Decision: 27.07.2022

RAKESH

.....PETITIONER

Versus

STATE OF HARYANA AND ANOTHER

...RESPONDENTS

CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR

Present: Mr. Parminder Singh, Advocate
for the petitioner.

Mr. Tanuj Sharma, AAG, Haryana.

Mr. T.P.Singh, Advocate
for respondent No. 2.

SURESHWAR THAKUR, J. (ORAL)

1. Though, the learned trial Judge concerned, through an order made on 19.09.2017, declined the relief to the prosecution, on the latter's application cast under Section 311 Cr.P.C., but in a revision reared thereagainst by the aggrieved-victim-injured, one Parveen Kumar, before the learned Additional Sessions Judge, Karnal, the latter through a decision made thereon, on 11.10.2017, proceeded to set aside, and, quash the above made order, by the learned trial Magistrate concerned.

2. The accused one Rakesh, becomes aggrieved from the order made by the revisional Court, and, has chosen to assail it, through his casting the instant petition before this court.

3. At the outset, the learned counsel appearing for the aggrieved accused Rakesh, has submitted that he does not nurse any grievance, with respect to the revisional Court ordering, for the re-summoning of PW-4, as his testification comprised only in his examination in chief became recorded, and, obviously, when he was not thereafter subjected to cross examination, whereas, the completest recording of his testification, was imperative, and, rather would occur only upon his cross examination also taking place. Moreover, the above was imperative for ensuring that the defence is not prejudiced. Therefore, insofar as, the leave as become granted by the learned revisional Court, for PW-4 Parveen, becoming recalled for his cross-examination, is concerned, it is upheld, and, affirmed.

4. Be that as it may, the learned counsel appearing for the aggrieved accused, one Rakesh has continued to contend, that though the learned revisional Court concerned, had declined leave to the prosecution, to recall Dr. Sucha Singh, but the the above declining(s) qua aggrieved accused Rakesh, as made through an order made by the learned revisional Court, upon the apposite revision petition, as, became constituted by aggrieved Parveen, before the learned revisional Court, is yet both legally defective, and, is also vitiated. In making the above submission he rests it, upon, there being no discussion in respect thereof, in the impugned order, much less any objective reason(s), being meted, with respect to the necessity of recalling of Dr. Sucha singh, or, there being no necessity.

5. A reading of the verdict drawn by learned revisional Court, on 11.10.2017, does reveal, that the learned revisional Court, has hyper-focused upon the necessity of recalling of PW-4, but has not made any iota of reference with respect to necessity of recalling of Dr. Sucha Singh, and, also without any discussion in respect thereof, rather it has ultimately proceeded to quash the order made, on 19.09.2017, by the learned trial Judge concerned.

6. Moreover, it has in the operative part of its verdict, granted a last opportunity to examine the prosecution witnesses. The lack of focus upon the necessity, or, otherwise of recalling of Dr. Sucha Singh, does in respect thereof, make the impugned order to be extremely cryptic, whereas, a dire necessity was cast upon the learned revisional Court concerned, to not only, in the impugned order, hence make discussions about the above necessity, or, otherwise, but also to assign objective reasons for accepting, or, declining the above prayer of the concerned.

7. Apparently, it has not done so. Therefore, the absence of discussion in respect thereof, and, also, for non assigning of any objective reasons for hence either accepting, or, declining the relief qua recalling of Dr. Sucha Singh, hence for the relevant purposes, and, yet ultimately in the operative part of the impugned order, the learned revisional Court rather quashing the order initially passed by the learned Magistrate or trial Judge, does make, the impugned order, only to the above extent to be ridden with a vice of complete non application of mind, and, also qua its being rendered in a slipshod manner.

8. In consequence, the instant petition, insofar, it relates only to

the necessity of recalling of Dr. Sucha Singh, or, otherwise, the impugned order is quashed, and, set aside, and, the lis is remanded to the learned Additional Sessions Judge, Karnal, to after hearing all concerned, to make a fresh decision, in accordance with law, only insofar as, the recalling of the above is concerned. The decision on remand, on the apposite application, be ensured to be made positively within two months from today.

9. Disposed of.

(SURESHWAR THAKUR)
JUDGE

27.07.2022
kavneet singh

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