

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

CRM-M-32545-2022

Reserved on: 22.07.2022

Pronounced on: 29.07.2022

Ramesh Kumar Singh

....Petitioner

Versus

State of Haryana and another

...Respondents

CORAM: HON'BLE MR. JUSTICE HARNARESH SINGH GILL

Present: Mr. Rahul Jaswal, Advocate, for the petitioner.

HARNARESH SINGH GILL, J.

Challenge in the present petition is to the order dated 04.07.2022 (AnnexureP.4) passed by the learned Sessions Judge, Panipat, whereby an application filed by respondent No.2-accused under Section 311 Cr.P.C. was allowed and the witnesses PW4 and PW5 were recalled for cross-examination.

Learned counsel for the petitioner would vehemently submit that while passing the impugned order, the learned trial Court, has failed to appreciate that on the previous dates i.e. 30.08.2021 and 26.10.2021, accused-respondent No.2 had duly been represented by a counsel and therefore, having availed of sufficient opportunities to cross-examine PW4 and PW5, the application moved by accused-respondent No.2 under Section 311 Cr.P.C. ought to have been dismissed. It is further submitted that the sole objective of accused-respondent No.2 in moving the said application is to delay and linger on the trial.

After hearing learned counsel for the petitioner and going through the impugned order, I do not find any merit in the present petition.

A perusal of the impugned order would clearly reflect that it has been specifically noticed therein that earlier accused-respondent No.2 and other two co-accused, namely, Ravi and Nima Thapa, were being represented by Shri Pawan Malik, Advocate. However, subsequently, a fresh Vakalatnama of Shri Mohd. Azam, Advocate, was filed on 26.10.2021, who had cross-examined the aforesaid witnesses on the said date. However, as per the record, Shri Azam, was appointed as a Legal Aid Counsel, only on behalf of co-accused Ravi Kumar and Nima Thapa, and not on behalf of accused-respondent No.2. The relevant extracts from the impugned order would read as under:-

“.....A perusal of the same reveals that on 30.08.2021, Shri Pawan Malik, Advocate had filed vakalatnama on behalf of the applicant-accused and the remaining accused Ravi and Nima Thapa. PW4 and PW5 had been examined-in-chief in absence of Shri Pawan Malik, Advocate. However, cross-examination of these witnesses was deferred on the request of Shri Pawan Malik, Advocate, to the effect that he was engaged only on that day and was unable to cross-examine them. Then PW4 and PW5 were discharged for that day and were recalled for cross-examination on 26.10.2021. On 26.10.2021, a fresh vakalatnama is shown to have been filed on behalf of the applicant-accused Avinash. Though this vakalatnama is shown to be filed by Shri Mohd. Azam, Advocate, but his signatures are not appended on the same. However, Shri Mohd. Azam, Advocate is shown to have cross-examined PW4 and PW5 on behalf of all the accused on 26.10.2021. It is further revealed that on 21.02.2022, fresh vakalatnama was filed by Shri Ravi Kumar Dhull, Advocate, on behalf of the applicant-accused Avinash. It is clear from the record that in fact on

26.10.2021, the applicant was not represented by any lawyer/counsel during the time when the cross-examination of PW4 and PW5 was conducted. It is also revealed from the record that Shri Mohd. Azam, Advocate, had been appointed as Legal Aid Counsel to represent co-accused Ravi Kumar and Nima Thapa only and neither he had been appointed a Legal Aid Counsel for the applicant at any point of time nor he is shown to have signed Vakalatnama on his behalf. In such circumstances, it is apparent on record that as on 26.10.2021, when the cross-examination of PW4 and PW5 was conducted, there was no counsel to represent the applicant.....”

Learned counsel for the petitioner is unable to contradict the aforesaid factual position.

Even otherwise, the FIR in this case was registered in 2020. The facts and circumstances on record, do not suggest that any attempt is being made to linger on or delay the trial proceedings by or on behalf of the accused.

In view of the above, no fault could be found with the impugned order passed by the learned Sessions Judge, Panipat.

Hence, the present petition is dismissed.

29.07.2022
ds

(HARNARESH SINGH GILL)
JUDGE

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