

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRR-562-2023 (O&M)
Date of Decision:- 21.03.2023

Surinderpal SinghPetitioner
Versus
State of PunjabRespondent

CORAM: HON'BLE MR. JUSTICE GURVINDER SINGH GILL

Present: Mr. Sant Pal Singh Sidhu, Advocate for the petitioner.
Mr. Luvinder Sofat, DAG, Punjab.

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GURVINDER SINGH GILL, J.

1. The instant revision petition has been filed by accused/petitioner Surinderpal Singh assailing order dated 22.2.2023 vide which an application dated 20.2.2023 (Annexure P-3) under Section 311 Cr.P.C. filed by the petitioner for recalling 8 prosecution witnesses i.e. PW-20 Divleen Singh, PW-53 Surinder Kumar, PW-57 Sanjeev Kumar Gupta, PW-71 Ashish Kapoor, PW-66 Inspector Inderpal Singh, PW-62 Arjun Singh, PW-8 Dharminder Singh and PW-74 Nageshwar Rao has been dismissed.
2. The petitioner alongwith another 10 accused is facing trial before the Special Court, SAS Nagar, Mohali in a case arising out of FIR No. 6 dated 8.6.2017 registered under Sections 420, 465, 467, 468, 471, 506/120B IPC and Sections 13(1)(d), 13(2) of the Prevention of Corruption Act, 1988 at Police Station Vigilance Bureau, Flying Squad-I, District SAS Nagar, Mohali. A large number of PWs have been cited. As many as 76 PWs have

already been examined. The trial has been pending since the last about 5 years and directions for expeditious disposal have already been issued by this Court vide order dated 27.9.2022 passed in CRM-M-23331-2019 which have also been got extended on request of the Presiding Officer. The trial Court has virtually been proceeding on day-to-day basis having regard to the fact that a large number of accused have been arrayed and a large number of witnesses have been cited by the prosecution.

3. The witnesses sought to be recalled had been appearing before the trial Court on several dates and while they were cross-examined by some co-accused, some other voluntarily opted not to cross-examine. The petitioner Surinderpal Singh and co-accused Swaranjit Kaur did not come forward either to cross-examine or to voluntarily give up their right of cross-examination and consequently, the trial Court upon noticing that a large number of opportunities have already been afforded to the petitioner treated the cross-examination by petitioner as 'Nil' of aforesaid 8 witnesses on different dates between 4.1.2023 and 20.2.2023. While cross-examination of PW-20 Divleen Singh, PW-53 Surinder Kumar and PW-57 Sanjeev Kumar Gupta of petitioner was treated as 'Nil' on 4.1.2023; cross-examination of PW-71 Ashish Kapoor and PW-66 Inspector Inderpal Singh by petitioner was treated as 'Nil' on 5.1.2023; and cross-examination of PW-8 Dharminder Singh, PW-62 Arjun Singh and PW-74 Nageshwar Rao by petitioner was treated as 'Nil' on 20.2.2023. The application under Section 311 Cr.P.C. was filed on 20.2.2023 (Annexure P-3) and was dismissed vide impugned order dated 22.2.2023 by passing an extensively detailed order by the trial Court, which is assailed by way of filing instant revision petition.

4. The grounds set forth in the application dated 20.2.2023 (Annexure P-3) for recalling the said 8 PWs are that there was some oral understanding between the petitioner and the Presiding Officer before the onset of winter vacation to the effect that the accused shall conduct cross-examination of the witnesses in question on or after 6.1.2023 and accordingly, an application for deferring the cross-examination was filed by the petitioner for deferring the cross-examination till 6.1.2023. It is averred that in the meantime, there was some conflict between the accused/applicant and the Presiding Officer and resultantly the counsel representing the accused/applicant chose not to appear so as to stay out of the conflict and on account of which their cross-examination came to be recorded as "Opportunity given/Nil". It is further averred that since the conflict between the petitioner and the Presiding Officer has been adjudicated upon by the Hon'ble Supreme Court, he persuaded his counsel to again represent him before the trial Court and that as such, he needs to be provided with another opportunity to cross-examine the witnesses lest there would be miscarriage of justice.
5. The trial Court, while considering the said application dated 20.2.2023 (Annexure P-3), referred to all the relevant *zimni* orders, as had been recorded by the trial Court and discussed the conduct of the petitioner and also the number of times each of the 8 PWs sought to be recalled, had appeared in the Court and consequently, dismissed the application vide impugned order dated 22.2.2023 upon finding the application to be without merit.
6. The learned counsel for the petitioner submitted that the 8 prosecution witnesses sought to be recalled are material witnesses and since the testimony of the said PWs would have a substantial bearing on the case, the

petitioner would stand seriously prejudiced in case he is deprived of an opportunity to cross-examine the said 8 PWs .

7. This Court has considered the aforesaid submission and has also perused the paper book.
8. Since the trial Court while dismissing the application under Section 311 Cr.P.C. has extensively referred to the background of the case and has also taken note of the number of times the PWs had appeared, this Court deems appropriate to reproduce the relevant extracts from the impugned order dated 22.2.2023 which are reproduced herein-under :-

Relevant discussion regarding recalling of PW-20 Divleen Singh, PW-53 Surinder Kumar and PW-57 Sanjeev Kumar Gupta

“6. This Court is of the considered view that the perusal of the records of the present case reveals that this Court has passed the three zimni orders dated 04.01.2023, the relevant part of which are reproduced here as under:-

“.....Furthermore, this Court is of the considered view that the cross examinations of PW-20 Divleen Singh, PW-53 Surinder Kumar and PW-57 Sanjeev Kumar Gupta have earlier been treated as NIL as the accused Surinderpal Singh and Swaranjit Kaur had opted not to cross examine these witnesses earlier, when the opportunity to them was given by the Court to do so and these PW-20 Divleen Singh, PW-53 Surinder Kumar and PW-57 Sanjeev Kumar Gupta **have been recalled again** at the application of the accused Surinderpal Singh and Swaranjit Kaur for their cross examinations on the behalf of the accused Surinderpal Singh and Swaranjit Kaur **vide order dated 25.08.2022** passed by this Court, however, the accused Surinderpal Singh and Swaranjit Kaur are **again seeking grant of time to cross examine these witnesses**, which, in the considered view of this Court, is further to delay the disposal of the present trial on merits as the trial of this case is pending for more than 5 years and several extensions of time for

concluding the same were earlier sought by the learned Predecessor Court of this Court as well as this Court.

In view of the above, no further justification is made out for deferring the cross examinations of these witnesses as the sufficient opportunities have already been granted to the accused Surinderpal Singh and Swaranjit Kaur to cross examine these witnesses as discussed herein before.

Therefore, the cross examinations of PW-20 Divleen Singh, PW-53 Surinder Kumar and PW-57 Sanjeev Kumar Gupta **are hereby treated as NIL**.....

.....**At this Stage**, an application for deferring the cross-examination has been filed, when after conducting the proceedings of this case, this Court has adjourned this case to 05.01.2023 for further proceedings as mentioned in the earlier Zimni order of even date. The Ahlmad was directed to put up the main case file again for further hearing and after receipt of the main case file, the main case is taken up for hearing on this application.

This application has been filed for deferring the cross-examination of the prosecution witnesses on the following grounds :-

- (i) The five prosecution witnesses have been summoned for its cross-examination, the details of whom were not told to the accused or his counsel in advance.
- (ii) Even the interim order was not uploaded till 07:58 AM and the copies of the screenshots in support of this claim are annexed with the aforesaid application.
- (iii) The main counsel is out of station and will return on 06.01.2023 and it was duly informed to this Court.

Before deciding this application, this Court is of the considered view that the report of the System Officer/System Assistant who supervises the uploading of the orders and computerization, is required with respect to the aforesaid ground No. (ii) mentioned in the aforesaid application. Therefore, the System Officer/System Assistant is directed to submit his report immediately in this regard as to whether the aforesaid Zimni order dated 03.01.2023 has been uploaded or not and if so, at what time the same was

uploaded. To come up at 03:00 PM for further proceedings.....

.....File is taken up again at 03:00 PM.

Report of Mr. Satvir Singh, the System Assistant has been received and as per his report, the Zimni order dated 03.01.2023 has been uploaded on dated 03.01.2023 at 06:11:26 PM in the CIS by the concerned Stenographer.

This application has been filed for deferring the crossexaminations of the prosecution witnesses on the following grounds :-

- (i) The five prosecution witnesses have been summoned for their cross-examinations, the details of whom were not told to the accused or his counsel in advance.
- (ii) Even the interim order was not uploaded till 07:58 AM and the copies of the screenshots in support of this claim are annexed with the aforesaid application.
- (iii) The main counsel is out of station and will return on 06.01.2023 and it was duly informed to this Court.

Learned Additional PP for the State, who is present in the Court, has stated at bar that he does not want to file written reply to this application, however, he has opposed the same.

Heard on the application for deferring the cross-examination of the prosecution witnesses.

This Court is of the considered view that so far as the first ground mentioned in the aforesaid application is concerned, the same is not acceptable, in as much as, the Zimni order dated 03.01.2023, (whereby PWs i.e. PW-53 Surinder Kumar, PW-8 Dharminder Singh, PW-20 Divleen Singh, PW-57 Sanjeev Gupta and PW-62 Arjun Singh were summoned for today), has been passed in the presence of the accused Surinderpal Singh, his counsel and in the presence of the counsel for the other accused. Furthermore, the aforesaid witnesses have been recalled for their cross-examination at the application submitted by the accused Surinderpal Singh and Swaranjit Kaur and thus, the accused Surinderpal Singh and Swaranjit Kaur as well as their respective counsel, who has to cross examine these witnesses, are already

aware about the cross-examination of these witnesses by them and this ground has been concocted at this later stage just to delay the disposal of the present case on merits, when the cross-examinations of these witnesses have already been treated as Nil vide separate earlier Zimni order of even date passed in this case for the detailed reasons mentioned therein and thus, this ground is hereby rejected for these reasons.

This Court is of the considered view that so far as the second ground mentioned in the aforesaid application is concerned, the same is not acceptable, in as much as, as per the report of Mr. Satvir Singh, the System Assistant attached with the District Courts Mohali for supervising the work relating to the uploading of orders and computerization, the Zimni order dated 03.01.2023 passed by this Court in the presence of the aforesaid accused and their respective counsel has been uploaded on the same date i.e. 03.01.2023 at 06:11:26 PM by the concerned Stenographer and if the same is not accessible to the accused or his counsel as claimed by them as per the alleged 3 photocopies of the screenshots of the app.ecourts.gov.in attached with the present application, then it might be as a result of networking problems or computer system failure at the end of the accused or their counsel, from where, they tried to access the same and thus, this ground is also rejected for the aforesaid reasons.

This Court is of the considered view that so far as the third ground mentioned in the aforesaid application is concerned, the same is not acceptable, in as much as, the perusal of the records of the present case reveals that the accused Surinderpal Singh and Swaranjit Kaur are represented in this case by three counsel namely Mr. K.P.S. Cheema Advocate, Mr. Rajesh Sharma Advocate and Mr. Rahul Bansal Advocate and the accused has very cleverly not mentioned as to whom of the aforesaid counsel is out of station and will return on 06.01.2023 and has filed this application through his counsel Mr. Rahul Bansal Advocate, (who has also cross-examined many witnesses in this case) on this ground with the view to delay the final disposal of this trial on merits. Furthermore, this Court is of the considered view that the Hon'ble High Court of Punjab and Haryana was pleased to direct

this Court to decide the present case within 3 months vide order dated 05.05.2022 passed in **CRM-16444-2022 in CRM-M-23331-2019** titled as “Surinderpal Singh Vs. State of Punjab”, wherein the Hon’ble High Court of Punjab and Haryana was also pleased to hold to the following effect:

“Keeping in view the aforesaid facts, let the trial be concluded within a period of 3 months positively excluding the period of summer vacations positively.

The application stands disposed of accordingly.

No further request for extension of time shall be entertained.”

Discussion regarding recalling of PW-71 Ashish Kapoor and PW-66 Inspector Inderpal Singh

“.....Furthermore, the learned defence counsel for the accused Surinderpal Singh and Swaranjit Kaur have partly cross-examined this witness i.e. PW-71 Ashish Kapoor on 6 dates i.e. 25.07.2022, 29.07.2022, 30.07.2022, 03.08.2022, 05.08.2022 and 22.09.2022 and have further sought time to cross-examine this witness.

Thus, this Court is of the considered view that **8 effective opportunities** were granted to the accused Surinderpal Singh and Swaranjit Kaur to complete the cross-examination of PW-71 Ashish Kapoor.

Furthermore, the perusal of the records of the present case reveals that the learned defence counsel for the accused Surinderpal Singh and Swaranjit Kaur have earlier sought time to cross-examine PW-66 Inspector Inderpal Singh thrice on dated 09.06.2022, 29.07.2022 and 01.08.2022, when this witness was present for his cross-examination as the learned defence counsel has earlier sought time to prepare for the same. Thus, this Court is of the considered view that **3 effective opportunities** were already granted to the accused Surinderpal Singh and Swaranjit Kaur to complete the cross-examination of this witness.

However, PW-71 Ashish Kapoor is again present for his cross-examination for the 9 th time and PW-66 Inspector Inderpal Singh is

again present for his cross-examination for the 4th time, however, a request by the accused Surinderpal Singh on his own behalf and on behalf of the accused Swaranjit Kaur is again made for deferring the cross-examination of these witnesses for non availability of his defence counsel as his defence counsel are busy in some other cases at Chandigarh District Courts. As per the mandate of law as contained in Proviso (b) to Section 309 (2) of Cr.P.C., the defence counsel being busy in some other case is not a ground to defer the cross-examination, more so, when the accused had already availed of **9 and 4 effective opportunities** to cross-examine PW-71 Ashish Kapoor and PW-66 Inspector Inderpal Singh respectively.”

Discussion regarding recalling of PW-8 Dharminder Singh, PW-62 Arjun Singh and PW-74 Nageswara Rao

“Furthermore, the perusal of the records of the present case reveals that the learned defence counsel for the accused Surinderpal Singh have sought time to cross-examine PW-8 Dharminder Singh **five times on dated 27.01.2021; 28.01.2021; 12.01.2023; 27.01.2023 and 30.01.2023** when this witness was present for his cross-examination however, the accused Surinderpal Singh has further sought time to crossexamine this witness. **This witness has come present for the sixth time for his cross-examination on behalf of the accused Surinderpal Singh.** Thus, this Court is of the considered view that **6 effective opportunities** were granted to the accused Surinderpal Singh to complete the cross-examination of PW-8 Dharminder Singh.

Furthermore, the perusal of the records of the present case reveals that the learned defence counsel for the accused Surinderpal Singh have sought time to cross-examine PW-62 Arjun Singh **seven times on dated 18.05.2022; 20.05.2022; 21.05.2022; 09.01.2023; 12.01.2023; 27.01.2023 and 30.01.2023**, when this witness was present for his cross-examination however the accused Surinderpal Singh has further sought time to cross-examine this witness. **This witness has come present today for the eighth time for his cross-examination on behalf of the accused Surinderpal Singh.** Thus, this Court is of the considered view that **8**

effective opportunities were granted to the accused Surinderpal Singh to complete the cross-examination of PW-62 Arjun Singh.

Furthermore, the perusal of the records of the present case reveals that the learned defence counsel for the accused Surinderpal Singh have sought time to cross-examine PW-74 Nageswara Rao **four times on dated 22.07.2022; 27.07.2022; 12.01.2023 and 23.01.2023**, when this witness was present for his cross-examination however the accused Surinderpal Singh has further sought time to cross-examine this witness. **This witness has come present for the fifth time for his crossexamination on behalf of the accused Surinderpal Singh.** Thus, this Court is of the considered view that **5 effective opportunities** were granted to the accused Surinderpal Singh to complete the crossexamination of PW-74 Nageswara Rao.

However, as the trial of this case is pending for more than 5 years and several extensions of time for concluding the same were earlier sought by the learned Predecessor Court of this Court as well as this Court, this request for deferring the cross-examination of this witness has no merit in it.

As the accused Surinderpal Singh has submitted that he does not want to avail the services of Mr. G.S. Khattri, Advocate the learned Amicus-Curiae appointed by this Court to defend him in this case as his earlier counsel have agreed to defend him in this case, therefore, Mr. G.S. Khattri, Advocate the learned Amicus-Curiae is hereby requested not to represent the accused Surinderpal Singh in this case and he is hereby discharged from his responsibilities as learned Amicus-Curiae appointed by this Court in this case and the assistance rendered by him as learned Amicus-Curiae in this case is appreciated.”

9. Thus, from the perusal of the above said extract, it is apparent that 3 out of the 8 PWs i.e. PW-20 Divleen Singh, PW-53 Surinder Kumar and PW-57 Sanjeev Kumar Gupta, who are presently sought to be recalled had earlier also been ordered to be recalled vide order dated 25.8.2022 pursuant to an earlier application under Section 311 Cr.P.C. filed by Surinderpal Singh (petitioner) and Swaranjit Kaur but despite the said opportunity of recalling

having already been afforded once to the petitioner on an earlier occasion, he again chose to keep away from the proceedings of the trial and did not conduct cross-examination and resultantly his cross-examination came be treated as 'Nil' again.

10. The petitioner rather seems to be resorting to dilatory tactics inasmuch as he had earlier filed a petition for transfer of the trial i.e. CRM-M-1721-2023 which was dismissed by this Court vide order dated 19.1.2023. The petitioner, being aggrieved by the said dismissal, challenged the same by way of filing SLP i.e. Special Leave to Appeal (Criminal) No. 1514 of 2023, but the same was also dismissed by the Hon'ble Supreme Court vide its order dated 10.2.2023. However, despite the said dismissal of the transfer petition as well as the SLP, the petitioner has again chosen to annex his complaint against the Presiding Officer, which is annexed as Annexure P-1 whereas this Court finds that the Presiding Officer has been proceeding in accordance with law and has been painstakingly recording the orders, as is evident from the impugned order dated 22.2.2023 and other zimni orders. The impugned order is a detailed order running into 34 pages taking note of all the relevant facts including the individual facts qua each of the 8 PWs sought to be recalled. As already noticed above, PW-20 Divleen Singh, PW-53 Surinder Kumar and PW-57 Sanjeev Kumar Gupta had already been recalled once on an earlier application of petitioner but petitioner again defaulted to cross-examine the witnesses.
11. The trial Court while discussing the position regarding recalling PW-71 Ashish Kapoor and PW-66 Inspector Inderpal Singh has taken note of the fact that nine effective opportunities had already been afforded to the petitioner to cross-examine PW-71 Ashish Kapoor and that four effective

opportunities had been afforded to cross-examine PW-66 Inspector Inderpal Singh.

12. The trial Court had granted six effective opportunities to the petitioner to cross-examine PW-8 Dharminder Singh and eight effective opportunities to cross-examine PW-62 Arjun Singh and five effective opportunities to cross-examine PW-74 Nageswara Rao. However, despite having availed the aforesaid number of opportunities, a request for further deferring the cross-examination had been made on behalf of the accused which was turned down by the trial Court. The trial Court has been proceeding at a fast pace pursuant to directions issued by this Court and the petitioner was very well aware of the said fact and it cannot be said that he had been taken by surprise. Rather, it is the mandate of law to make efforts to conduct trial on day-to-day basis. In any case, this Court finds that sufficient opportunities have already been afforded to the accused/petitioner to cross-examine the witnesses in question and he himself had chosen not to cross-examine the witnesses and had been seeking deferring of the cross-examination which can hardly be appreciated.
13. The grounds set forth in the application under Section 311 Cr.P.C. as regards the counsel of the petitioner having refused to appear on his behalf does not sound very convincing inasmuch as when the Presiding Officer nominated a counsel as *Amicus Curiae* to represent the petitioner and to conduct proceedings on his behalf, the petitioner came out with a plea that his counsel has now agreed to represent him. The said plea was apparently a cooked up plea. Nothing has been shown to this Court as to whether the petitioner has taken any action against the lawyers who had chosen not to

appear for him despite having been engaged by the petitioner. Even the plea of the petitioner that immediately before the winter vacation, there was some kind of understanding between the accused and the Presiding Officer that the cross-examination would be conducted after 6th of January 2023 is not supported by any kind of evidence inasmuch as nothing is recorded in any *zimni* orders to this effect. The trial Court has discussed all the pleas in detail and this Court need not discuss the same in order to maintain brevity as the facts which have already been discussed above are sufficient to establish that there is no case for permitting the petitioner to recall the witnesses whom he had intentionally chosen not to cross-examine despite the fact that the witnesses had appeared on several dates.

14. Though, the allegations, as levelled by the petitioner against the conduct of the Presiding Officer in his transfer application had not found favour either by this Court or by the Supreme Court and need not be discussed in detail but apparently the petitioner is irked by some of the orders passed by the trial Court which are not in his favour which do not suit him and all sorts of tactics are being employed to demoralize the Presiding Officer who is taking all pains to conclude the trial expeditiously, pursuant to specific directions issued by this Court. In such a scenario, it was expected of the petitioner to fully cooperate with the Court rather than resort to dilatory tactics.

15. This Court does not find any infirmity in the impugned order dated 22.2.2023 and the same is hereby upheld.

21.03.2023

kamal

(Gurvinder Singh Gill)
Judge

Whether speaking /reasoned
Whether Reportable

Yes / No
Yes / No