

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Sr. No.226

CRM-M-11498-2020

Date of decision: 24.02.2023

Rajinder Singh

....Petitioner

Versus

State of Punjab

....Respondent

CORAM: HON'BLE MR. JUSTICE DEEPAK SIBAL

Present: Mr. Sandeep Kumar Advocate, for the petitioner.

Mr. A.P.S. Tung, DAG, Punjab.

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DEEPAK SIBAL, J. (Oral)

Through the present petition challenge is made to the order dated 16.01.2020 passed by the Judicial Magistrate, Ist Class, Ludhiana (for short – the trial court) through which an application filed by the petitioner under Section 311 Cr.P.C. to recall PWs Vivek Bakshi and Neelam Bakshi to cross examine them was rejected.

On a complaint by Neelam Bakshi an FIR bearing No.27 dated 14.04.2014 was registered against the petitioner under Sections 382 and 411 IPC at Police Station Division No.8, District Ludhiana. After completing the investigation the police filed a report under Section 173 Cr.P.C. on the basis whereof the charges were framed against the petitioner. In the course of the trial which ensued, on 18.09.2019, two prosecution witnesses namely Vivek Bakshi and Neelam Bakshi were examined. Thereafter the petitioner filed an application under Section 311 Cr.P.C. seeking to recall the aforesaid two witnesses to enable the petitioner's counsel to cross examine them which prayer of the petitioner was declined through the impugned order on the ground that the present

matter was an old one and that when the said witnesses had been examined, due opportunity had been given to the learned counsel for the petitioner to cross examine them which opportunity had not been availed.

Learned counsel for the parties have been heard and with their able assistance the record of the case has also been perused.

The petitioner is being prosecuted on the basis of a complaint filed against him by Neelam Bakshi. Neelam Bakshi and Vivek Bakshi, who are husband and wife, were examined as witnesses for the prosecution on 18.09.2019. A perusal of the order passed by the trial court clearly reveals that on 18.09.2019 the petitioner's counsel was not present. That being so, the primary reason given in the impugned order to reject the petitioner's prayer that on 18.09.2019, when the aforesaid witnesses had been examined, opportunity to cross-examine them was given to the learned counsel for the petitioner which was not availed of, is against the record.

On the ground of delay in the disposal of the petitioner's trial also the petitioner could not have been denied an opportunity to cross-examine the PWs as it is not forthcoming from the impugned order or the record that the delay in its disposal is attributed to the petitioner.

Further, at the threshold of the litigation that the petitioner faces, if he is not allowed to cross-examine the complainant, it would definitely prejudice his case in the setting up of his defence. That would also violate the principles of natural justice.

In the light of the above, the impugned order is set aside and the trial court is directed to recall PWs Neelam Bakshi and Vivek Bakshi for their cross-examination by the petitioner's counsel.

It is made clear that only one opportunity shall be granted to the petitioner to cross-examine the aforesaid witnesses.

The petition is allowed in the above terms.

The trial court is directed to dispose of the petitioner's trial within one month from the date of receipt of a copy of this order.

February 24, 2023
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(DEEPAK SIBAL)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No