

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-17343 of 2023

Date of Decision: April 12, 2023

Sanjay Kumar @ Sanjay Thakur and another ...Petitioners
Versus
The State of Punjab and another ...Respondents

CORAM: HON'BLE MR. JUSTICE DEEPAK GUPTA

Present:- Mr. Gagan Oberoi, Advocate for the petitioners.

DEEPAK GUPTA, J.

Prayer in this petition filed under Section 482 Cr.P.C is to quash/ set aside/ modify impugned order dated 27.03.2023 (Annexure P.12) passed by learned Additional Chief Judicial Magistrate, Ludhiana in complaint bearing No.COMA/7296/2015 (CNR No. PBLD030067712010) titled “Intelligence Officer, Directorate of Revenue Intelligence (DRI) Vs. Agro Impex & Others”, under Sections 132, 135(1)(a)(b) and (c) and 135(a) of Customs Act, 1962.

By way of the impugned order, cross-examination of CW1 – Davinder Singh qua the petitioners- accused Sanjay Thakur and Parmod Kumar was ordered to be treated as nil.

It is stated by learned counsel that order dated 26.09.2019 whereby petitioners and others were charge-sheeted, was under challenge in the revision which was pending before learned Additional Sessions Judge, Ludhiana. During adjudication of the revision petition, the record of the trial Court was summoned and was tagged with the revision petition. Written submission have already been filed before the Revisional Court, though no order was passed. On 27.03.2023, the revision was listed for final orders and on the same day, matter was also

fixed before the trial Court. It is contended that the trial Court was required to await the outcome of the revision petition but exceeding its jurisdiction, by calling the record from the Court of Sessions, the Court of learned Additional Chief Judicial Magistrate started examining the witnesses. An application was moved by the petitioners stating therein that their counsel was not available but without giving fair opportunity to the petitioners, the Court proceeded in hasty manner and treated the cross-examination as nil.

The impugned order reveals that original file was received on 27.03.2023 itself. Cross-examination of CW1 Davinder Singh was conducted on behalf of co-accused Sanjeev Kashyap and Sunil Kashyap. Although application was moved on behalf of the petitioners to grant an adjournment on the plea that revision petition filed by them was still pending but after observing that case was ten years old and was to be decided expeditiously and there was no ground made out to allow the adjournment, cross-examination of CW1 qua petitioners Sanjay Thakur and Parmod Kumar was ordered to be treated as nil.

Although mere pendency of the revision could not be a ground to adjourn the matter in the absence of any stay but considering the fact that original file was earlier tagged with the revision file and had been received before the trial Court on 27.03.2023 itself, it was in the interest of justice, to adjourn the matter on that day on the request made by the petitioners as it was also pleaded in the petition that their counsel was out of station on that day.

As such, the impugned order dated 27.03.2023, to the extent of treating the cross-examination of CW1 Davinder Singh qua the

petitioners as nil is hereby set aside. Learned trial Court is directed to grant one opportunity to the petitioners Sanjay Thakur and Parmod Kumar to cross-examine CW1 Davinder Singh.

It is informed that matter is fixed before the trial Court for tomorrow, 13.04.2023.

Parties are directed to appear before the trial Court on the date fixed i.e. 13.04.2023 on which date, trial Court shall fix a date for conducting the cross-examination of CW1 Davinder Singh on part of the petitioners. It is made clear that no further opportunity shall be provided for this purpose.

Disposed of.

April 12, 2023

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**(DEEPAK GUPTA)
JUDGE**

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