

impugned order leading to the filing of the present petition.

3. I have heard learned counsel for the parties.

4. Learned counsel for the petitioner has submitted that the impugned order is not sustainable because the application under Section 311 Cr.P.C. was moved when the evidence of the prosecution was going on and, therefore, the trial Court gravely erred in declining the said application and denying an opportunity to the accused to cross-examine the complainant. It has been submitted that one opportunity to cross-examine the complainant be granted as the absence of the counsel representing the accused on the relevant date was on account of the counsel being busy in other Courts.

5. On the other hand, learned State counsel submits that there is no illegality or infirmity in the order.

6. I have considered the submissions made by learned counsel for the parties. FIR No.41 was registered on 20.01.2015 under Sections 406 and 420 of IPC at Police Station 7, Faridabad on a complaint having been submitted by one Sachin Arvind Acharya. The complainant appeared as PW-4 before the trial Court on 16.01.2018 and his examination-in-chief was recorded. The case was adjourned to 30.01.2018 for his cross-examination but the witness could not appear after which the case was adjourned to 12.02.2018. On this date, cross-examination could not be conducted as learned counsel representing the accused was stated to be busy in some other Court. After waiting for some time, the trial Court observed that an opportunity had been granted for cross-examining the witness and treated the cross-examination as 'nil'. Faced with this situation, an application under Section 311 Cr.P.C. was filed by the accused seeking the recalling of PW 4-Sachin Arvind Acharya. The trial Court dismissed this application stating that the accused was trying to fill the lacuna. In the considered opinion of this Court, the trial Court gravely erred in dismissing the application

filed by the petitioner under Section 311 Cr.P.C. Admittedly, the trial was going

on when the application was moved. The trial is still going on and as per learned counsel representing State of Haryana, few witnesses still remain to be examined. The trial Court should have kept in mind that without cross-examination of the complainant, his entire case would be accepted as correct which would cause a grave prejudice to the accused.

7. This Court fails to understand as to what lacuna was being tried to be filled by the accused by making a prayer to cross-examine the complainant. The trial Court should have been more sensitive in its approach. It has to be borne in mind that the duty of the Courts is to administer justice and not to deal with important rights of the parties in a casual manner. The denial of an opportunity to the accused to cross-examine the complainant when the trial was going would in fact amount to denial of justice. The trial Court should also have been more careful in mentioning dates and facts in the impugned order as at many places different dates and facts have been mentioned.

In view of the above, the present petition is allowed. The order dated 12.06.2018, passed by the learned Judicial Magistrate First Class, Faridabad, is set aside. The Court concerned is directed to grant one opportunity to the accused to cross-examine PW-4 by recalling him on a date to be fixed by the Court concerned.

04.05.2023
Prince Chawla

(VIKRAM AGGARWAL)
JUDGE

Whether speaking/reasoned Yes/No

Whether reportable Yes/No