

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

CRM-M-7871-2017 (O&M)

Date of Decision: 04.07.2023

Swaran Singh Jhatpat

....Petitioner(s)

Versus

State of Punjab and another

.....Respondent(s)

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Mr. Liaqat Ali, Advocate, for the petitioner.

Mr. Kuldeep Singh, AAG, Punjab.

Mr. Vaibhav Narang, Legal Aid Counsel,
for respondent No.2.

JASGURPREET SINGH PURI, J.

1. The present is a petition filed under Section 482 of the Code of Criminal Procedure for quashing of order dated 10.01.2017 (Annexure P-2) passed by the learned JMIC, Ludhiana.

2. FIR No.54 dated 24.02.2013, under Sections 420 and 120-B IPC, Police Station Basti Jodhewal, District Ludhiana was lodged at the instance of the complainant/respondent No.2. Thereafter the trial commenced and case was fixed for prosecution evidence. At that stage on 08.08.2016, complainant/respondent No.2 namely Davinder Kumar appeared as PW3. The aforesaid complainant was partly cross examined and the remaining cross-examination was deferred on the request of defence

counsel. However when the case was thereafter fixed on 24.10.2016, the aforesaid complainant/PW3 remained present in the Court for whole day but defence counsel failed to appear to further cross-examine the complainant. Thereafter, the testimony PW was closed by order. Thereafter an application was moved by the petitioner/accused for recalling of order dated 24.10.2016 since the complainant was not fully examined, an opportunity may be granted for completing the cross-examination of the complainant. By way of impugned order dated 10.01.2017 (Annexure P-2) the learned Judicial Magistrate Ist Class, Ludhiana however dismissed the application primarily on the ground that the Criminal Court has no power to recall its own orders and the petitioner/accused cannot be allowed to take advantage of his negligence as he failed to conclude the cross-examination of PW3, although the aforesaid witness remained present in the Court for the whole day on 24.10.2016.

3. Mr. Liaqat Ali, Advocate appearing on behalf of the petitioner submitted that it is a case where the cross-examination of the complainant/respondent No.2 was not complete and the cross-examination was deferred for 24.10.2016 but on that day the complainant had come to the Court almost near lunch time and by that time the counsel for the petitioner/accused left the Court due to some urgent work and request was made to the learned Court in this regard. He submitted that one more opportunity ought to have been granted by the learned trial Court since the cross-examination of the complainant is right of defence counsel which has been forfeited. He further submitted that even otherwise also in the present case the passing of the final order by the trial Court has been stayed by this

Court way back on 25.05.2017 and more than 6 years have elapsed that even the final order could not be passed because of the interim order passed by this Court and in this way otherwise also there had been a delay in the case before the learned trial Court. He submitted that only one opportunity may be granted to the petitioner for cross-examination of the complainant.

4. On the other hand, Mr. Vaibhav Narang, learned Legal Aid Counsel appearing on behalf of respondent No.2 submitted that once the defence counsel was granted time for cross-examination and he on the earlier date had partly cross-examined the complainant, then on the next day he ought to have examined the complainant fully but he did not do the same and that was the reason as to why the prosecution evidence was closed.

5. I have heard the learned counsel for the parties.

6. The only prayer made by the learned counsel for the petitioner in the present case is that respondent No.2 who is PW3/complainant was earlier partly cross-examined by the defence counsel but only one opportunity may be granted to fully examine him. The FIR was lodged on the basis of complaint made by respondent No.2 under Sections 420 and 120-B IPC. When the present petition was filed, the passing of the final order by the learned trial Court was stayed by this Court in the year 2017 and more than 6 years have elapsed in this regard. This Court is of the view that it will be in the interest of justice to grant one opportunity to the counsel for the petitioner/accused to further cross-examine the PW3/complainant because a right vests in the defence counsel to fully cross-examine the complainant.

7. Consequently, the present petition is allowed and disposed of.

The impugned order Annexure P-2 is hereby set aside. The trial Court is directed to give at least one opportunity to the defence counsel to cross-examine the PW3/respondent No.2 after recalling him subject to payment of costs of Rs. 2,000/- to be paid to respondent No.2 by the petitioner.

8. Since the main case has been disposed of, interim order dated 25.05.2017 also stands vacated.

04.07.2023

rakesh

(JASGURPREET SINGH PURI)
JUDGE

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