

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-34871-2022 (O&M)

Date of Decision: 28.08.2023

Charanjit Kaur

. . . . Petitioner

Vs.

State of Punjab

. . . . Respondent

CORAM: HON'BLE MR JUSTICE DEEPAK GUPTA

Present: - Mr. Krishan Sharma, Advocate, for the petitioner.

Mr.P.S. Pandher, AAG, Punjab.

DEEPAK GUPTA, J.

Petitioner is facing trial in case FIR No.34 dated 08.03.2020 registered at Police Station City South, Moga under Sections 451 & 506 IPC, in the Court of ld. CJM, Moga.

2. The grievance of the petitioner is that during trial, examination-in-chief of PW7 Vineet Kumar Lal, Chief Manager, Central bank of India, was recorded in the absence of the petitioner-accused and also in the absence of his counsel, despite the fact that objection had been raised before the Court.

3. It is contended that this is in violation of Section 273 Cr.P.C., which reads as under: -

273. Evidence to be taken in presence of accused. — Except as otherwise expressly provided, all evidence taken in the course of the trial or other proceeding shall be taken in the presence of the accused, or, when his personal attendance is dispensed with, in the presence of his pleader:

Provided that where the evidence of a woman below the age of eighteen years who is alleged to have been subjected to rape or any other sexual offence, is

to be recorded, the court may take appropriate measures to ensure that such woman is not confronted by the accused while at the same time ensuring the right of cross-examination of the accused.

Explanation — In this section, “accused” includes a person in relation to whom any proceeding under Chapter VIII has been commenced under this Code.

4. Ld. Counsel placed reliance on ***Atma Ram and others Vs. State of Rajasthan***, Criminal Appeal Nos.656-657 of 2019, decided on 11.04.2019, wherein it has been held by Hon’ble Supreme Court as under: -

18. Section 273 opens with the expression “Except as otherwise expressly provided...” By its very nature, the exceptions to the application of Section 273 must be those which are expressly provided in the Code. Shri Hegde is right in his submission in that behalf. Sections 299 and 317 are such express exceptions provided in the Code. In the circumstances mentioned in said Sections 299 and 317, the contents of which need no further elaboration, the Courts would be justified in recording evidence in the absence of the accused. Under its latter part, Section 273 also provides for a situation in which evidence could be recorded in the absence of the accused, when it says “when his personal attendance is dispensed with, in the presence of his pleader”.

5. Heard. In the present case, as the observations made by Id. Trial Court recorded below the cross-examination of PW7 Vineet Kumar Lal, reveals that objection had been raised by defence counsel to the effect that examination-in-chief of the witness had been recorded in the absence of counsel as well as in the absence of the accused. The said objection was repelled by the trial Court simply for the reason that earlier case had been called several times and intimation had been given to the counsel, but nobody had appeared. However, the order does not suggest that appearance of the accused had been dispensed with or any other coercive action was taken against him in order to procure his presence. Since the examination-in-chief of PW7 had been recorded in the absence

of the accused-petitioner or her counsel, so there is a clear violation of Section 273 Cr.P.C.

6. As such, the present petition is accepted. Trial Court is directed to re-record the statement of PW7 Vineet Kumar Lal in the presence of accused/her counsel, in accordance with law. The statement of Vineet Kumar Lal, earlier recorded, shall not be considered.

Disposed of.

Pending application, if any, shall also stands disposed of.

(DEEPAK GUPTA)
JUDGE

28.08.2023

Vivek

- 1. Whether speaking/reasoned?
- 2. Whether reportable?

Yes/No
Yes/No