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123 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-41731-2023
Date of Decision: 23.08.2023

Anil @ Ganni

..... Petitioner

Versus

State of Haryana

..... Respondent

CORAM: HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

Present : Mr. K.D.S.Hooda, Advocate,
for the petitioner.

RAJBIR SEHRAWAT, J. (ORAL)

1. The present petition under Section 482 of the Code of Criminal Procedure has been filed for quashing of the impugned order dated 06.07.2023 passed by the Additional Sessions Judge, Hisar, in case FIR No.005 dated 03.01.2021, registered under Sections 302 and 34 of the Indian Penal Code, 1860, (for short, 'IPC') (Sections 201 and 364 IPC were added later on) at Police Station Sadar Hansi, District Hisar, vide which the application filed by the petitioner/accused for summoning the prosecution witnesses, i.e. PW2-Sandeep and PW3-Bhoop Singh for further cross-examination, has been dismissed.

2. It is submitted by the learned counsel for the petitioner that the petitioner is an accused for the offences under Sections 302, 34, 201 and 364 of the IPC in the aforesaid FIR. When the prosecution witnesses, i.e. PW2-Sandeep and PW3-Bhoop Singh were cross-examined during the Covid-19

period, the petitioner was present only through the video conference. Therefore, the proper communication between the petitioner and his counsel could not take place and the petitioner could not conduct the cross-examination of the aforesaid witnesses. The petitioner has even changed his counsel so as to cross-examine the aforesaid prosecution witnesses in the right earnest. An application was filed before the Trial Court to recall the above-said witnesses for cross-examination, however, the same has been rejected by the Trial Court only on the ground that the change of counsel cannot be a ground for recalling the witnesses for further cross-examination. The petitioner is an accused in a serious crime, therefore, unless he is permitted to cross-examine the aforesaid prosecution witnesses, in line of his defence, then the case of the petitioner would be seriously prejudiced against him. Hence, the petitioner deserves to be granted one more opportunity to cross-examine the aforesaid two witnesses by recalling them for further cross-examination.

3. Notice of motion.

4. On the asking of the Court, Mr. Bhupender Singh, Deputy Advocate General, Haryana, accepts notice on behalf of the respondent State.

5. On the other hand, learned counsel for the State has submitted that the counsel for the petitioner has already conducted lengthy cross-examination of the aforesaid two witnesses; and the application for recalling of witnesses was filed by the petitioner only as a delaying tactics to delay the

conclusion of the Trial Court. Therefore, the aforesaid witnesses are not required to be recorded for further cross-examination.

6. Having heard learned counsel for the parties and having perused the case file, this Court finds that there is no doubt that the petitioner has conducted at lengthy cross-examination of the aforesaid two witnesses. Therefore, per se, there may not be any impropriety in the order passed by the Court below.

7. However, the law of procedure is handmade to advance the interest of the substantial justice. Disbursal of the substantial justice requires granting full opportunity to cross-examine any prosecution witnesses as per his choice, so that, the petitioner may not have any grievance that he was not heard properly. Since, the petitioner is an accused in a serious crime, therefore, if he is not permitted to conduct the cross-examination, as he so desires, then his case would be seriously prejudiced against him. But although, the petitioner cannot be granted unlimited time and unlimited opportunities for cross-examining of the prosecution witnesses, however, it would not be unjustified, if the petitioner is granted one more opportunity to cross-examine the aforesaid prosecution witnesses; so as to allay any doubt in the mind of the petitioner that he was not granted full opportunity to defend himself.

8. Accordingly, the present petition is allowed and the impugned order dated 06.07.2023 passed by the Additional Sessions Judge, Hisar, is set aside. The Trial Court is directed to grant one more effective opportunity to

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the petitioner to cross-examine each of the aforesaid prosecution witnesses. However, the aforesaid opportunity shall be granted by the Trial Court within a period of 15 days as counted from the date next fixed before the Trial Court. If need be, for that purpose, the Trial Court would fix the requisite dates within the said period of 15 days only.

(RAJBIR SEHRAWAT)
JUDGE

23.08.2023
adhikari

Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No