

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

121

CRM-M No.49259 of 2023 (O&M)
DATE OF DECISION : 06th OCTOBER, 2023

Varun

.... Petitioner

Versus

State of Haryana and another

.... Respondents

CORAM : HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

Present : Mr. D.S. Matya, Advocate
for the petitioner.

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RAJBIR SEHRAWAT, J. (Oral)

1. This is a petition filed by the petitioner under Section 482 Cr.P.C. praying for quashing of impugned order dated 20.09.2023 (Annexure P-9) passed by Additional Sessions Judge, Gurugram, Haryana, vide which, the application under Section 311 Cr.P.C. filed by the petitioner was dismissed in case of FIR No.212 dated 21.06.2021, under Sections 148, 149 and 302 IPC registered at Police Station Sector-40, Gurugram.

2. It is submitted by learned counsel for the petitioner that the petitioner is an accused in a case under Section 302 IPC. All the prosecution witnesses have been examined. However, the said witnesses were not examined in one go, rather, they were examined in a peace-meal

manner. In the process, PW-6 Mangal Singh was examined earlier and he had deposed before the trial Court that he was present at the place of occurrence on the date of incident and he had taken the deceased to the hospital. However, subsequently, when PW-11 Kamlesh was examined, she had deposed that said Mangal Singh was at Udaipur on that date and he had come subsequently at the time when the post-mortem was to be conducted. Since, the factum of Mangal Singh, being available at Udaipur is a new fact which was not earlier in the knowledge of the petitioner, therefore, the cross-examination of said Mangal Singh could not be conducted on the said aspect. The petitioner wanted to cross-examine the said PW-6 Mangal Singh on this aspect only. Accordingly, the application in this regard was moved before the trial Court for recalling of PW-6 Mangal Singh for further cross-examination. However, that application has been dismissed by the Court below. It is further submitted by learned counsel for the petitioner that since the petitioner is an accused in the case for an offence under Section 302 IPC, which can invite most serious punishment, therefore, the petitioner should have been granted an opportunity to make an effort to prove the case of the prosecution to be false. The petitioner does not have any intention to waste time of the trial Court or to delay the proceedings. He needs only one opportunity and thereafter he will not move any further application for recalling of any other witness.

3. Notice of motion.

4. Mr. Krishan K.Chahal, Addl. Advocate General, Haryana, accepts notice on behalf of the respondent/State and has submitted that the petitioner is involved in a heinous crime. The petitioner has already

been granted due opportunities to cross-examine the witnesses of the prosecution. Therefore, at this fag end of the trial, the trial Court has rightly dismissed the application of the petitioner for recalling of the witness.

5. Having heard learned counsel for the petitioner and having perused the case file, this Court finds that the trial Court had granted due opportunities to the petitioner to cross-examine the prosecution witnesses. Therefore, this Court does not find any *ex facie* impropriety with the course of action adopted by the trial Court.

6. However, the law of procedure is handmade to advance the interest of the substantial justice. The demand of the substantial justice is that the parties are heard-out; instead of excluding them from hearing. In the present case, the petitioner is facing trial for most serious offence and his case can be prejudiced beyond redemption, if he is denied the opportunity to cross-examine the prosecution witness in the manner and to the extent he so desires. Hence, it would not be unjustified to grant one effective opportunity to the petitioner to cross-examine PW-6 Mangal Singh, however, by putting him under an appropriate financial burden; so as to make him realize his mistake in wasting time of the Court.

7. In view of the above, the impugned order dated 20.09.2023 passed by the trial Court is set aside and the trial Court is directed to grant one effective opportunity to the petitioner to cross-examine PW-6 Mangal Singh, however, subject to payment of ₹10,000/- as costs, to be deposited by the petitioner with the Poor Patient Welfare Fund, PGIMER, Chandigarh, within a period of three days from today.

8. However, it is clarified that the petitioner shall be granted the above said opportunity only on production of the receipt before the trial Court qua the petitioner having deposited the costs; as ordered above.
9. Disposed of in the above terms.

06th OCTOBER, 2023
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(RAJBIR SEHRAWAT)
JUDGE

<i>Whether speaking/reasoned:</i>	<i>Yes</i>	<i>No</i>
<i>Whether Reportable:</i>	<i>Yes</i>	<i>No</i>