

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

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**CRM-M No. 54718 of 2022 (O & M)
Date of Decision : 2.3.2023**

Varinder Kumar @ Gopi

..... Petitioner

versus

State of Punjab

..... Respondent

CORAM: HON'BLE MR. JUSTICE TRIBHUVAN DAHIYA

Present: Mr. J.S. Ghumman, Advocate, for the petitioner

TRIBHUVAN DAHIYA J. (ORAL):

This petition has been filed for setting aside the order dated 19.7.2022 (Annexure P-1), whereby cross-examination of PW-8 ASI Baljit Kaur by the petitioner was treated as nil, as well as the order dated 28.9.2022 (Annexure P-3), passed by the Additional Sessions Judge, whereby the petitioner was declined permission to cross-examine the prosecution witness/PW-8, in case FIR No. 39 dated 18.4.2021 under Sections 323, 354-A, 452 and 506 IPC and Section 12 of POCSO Act, 2012 registered at Police Station Division No.1, District Police Commissionerate, Jalandhar.

Learned counsel for the petitioner contends that the prosecution witness ASI Baljit Kaur/Investigating Officer of the case, was examined in chief on 19.7.2022. Since the petitioner/accused had to engage a new counsel as the earlier counsel representing him migrated to Canada, a request was made to the trial Court to defer cross-examination of the witness on that account. The request was declined and it was recorded that cross-examination of the witness shall be treated as nil, vide order dated 19.7.2022 (Annexure P-1). Thereupon, the petitioner moved an application dated 23.8.2022 (Annexure P-2) again

seeking permission to recall PW-8 for cross-examination, by specifically pleading that the petitioner/accused had engaged a new counsel on 19.7.2022, and had filed fresh power of attorney on the same day. Request for adjournment for cross-examination of the witness was also made to the trial Court that day, which was declined. It was prayed that in the interests of justice, the witness/PW-8 should be recalled for cross-examination. This application was also declined vide order dated 28.9.2022 (Annexure P-3), observing that the defence counsel was adamant and not ready to cross-examine the witness at all, therefore, there was no reason to allow the application. Allowing the application would defeat the provisions of law and make it habit for seeking adjournments on frivolous grounds.

Notice of motion.

Mr. Jashandeep Singh, AAG. Punjab, accepts notice on behalf of the respondent/state and, on instructions from ASI Paramjit Kumar, submits that trial of the case is going on and eight out of sixteen prosecution witnesses have been examined so far. He has further submitted that prayer for engaging a new counsel and seeking adjournment for cross-examination of the witness on that account should not be allowed.

In view of the facts enumerated above, it is apparent that material prosecution witness PW-8, who is Investigating Officer of the case, has not been cross-examined by the petitioner/accused. Although learned counsel for the petitioner has argued that the previous counsel engaged by the petitioner/accused had immigrated to Canada, the fact has neither been averred in the petition nor is it otherwise established on record. Still, it cannot be denied that failure to cross-examine a material prosecution witness by learned counsel representing the petitioner/accused before the trial Court, will materially

prejudice his rights. In case there has been a lapse or slackness on the part of the counsel in failing to cross-examine the witness, the accused should not be made to suffer on that account. As per the settled law, an accused should not be punished on account of any negligence of the counsel representing him/her, more so in a criminal trial. Besides, trial of the case is already going on, and the prosecution witnesses still remain to be examined.

Therefore, the impugned order dated 19.7.2022 (Annexure P-1), whereby cross-examination of PW-8 by the petitioner was treated as nil, and also the order dated 28.9.2022 (Annexure P-3), whereby his application for recalling of the prosecution witness/PW-8 for cross-examination was declined, are hereby set aside. The petitioner's application dated 23.8.2022 (Annexure P-2) is allowed directing the trial Court to recall PW-8/ASI Baljit Kaur, for cross-examination by the petitioner/accused. It is made clear that no further opportunity for the purpose shall be granted.

Disposed of.

Pending miscellaneous application(s), if any, stands disposed of accordingly.

(TRIBHUVAN DAHIYA)
JUDGE

2.3.2023

Ashwani

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