



CRM-M-39279-2024

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**281 IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH****CRM-M-39279-2024****Date of decision: 27th August, 2024**

Manish Prabhakar

...Petitioner(s)

Versus

State of Punjab

...Respondent(s)

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present: Mr. Sapan Dhir, Advocate for the petitioner.

Mr. A.S. Samra, AAG, Punjab.

MANISHA BATRA, J (ORAL):-

The instant petition has been filed by the petitioner seeking setting aside of the order dated 06.08.2024 passed by the Court of learned Additional Sessions Judge, SAS Nagar, Mohali in Sessions case bearing No. CIS-SC-56 of 2016 titled as 'State of Punjab Vs. Manish Prabhakar and another' arising out of FIR No. 102 dated 10.10.2015 registered under Sections 302 read with 34 of IPC, Sections 25(1) and 27 of Arms Act, 1959 whereby an application moved by him for allowing him to conduct further cross-examination of PW1- Veer Singh had been dismissed.

2. The relevant facts in brief are that the petitioner is facing trial in the above mentioned case. He had moved an application under Section 311 of Cr.P.C. before the learned trial Court for recalling one prosecution witness namely PW1- Veer Singh. This application was allowed by the trial Court



vide order dated 26.08.2021. Feeling aggrieved by the said order, Smt. Paramjit Kaur who is mother of the deceased allegedly murdered by the petitioner, challenging the same by filing a petition bearing No. CRM-M-37226-2021 before this Court. In the said petition, vide order dated 13.09.2021, directions were given to the trial Court to adjourn the proceedings of the case beyond the date fixed by this Court. The above said petition had, however, subsequently been withdrawn by Smt. Paramjit Kaur on 02.07.2024. It has come on record that since till date, PW-1 Veer Singh had not been further cross-examined by the petitioner, therefore, he moved an application before the learned trial Court for recalling the said witness in compliance of order dated 26.08.2021. It is the application of the petitioner that has been dismissed vide impugned order dated 06.08.2024 compelling the petitioner to approach this Court.

3. Learned counsel for the petitioner has argued that the impugned order dated 06.08.2024 is not at all sustainable in the eyes of law as vide order dated 26.08.2021, the petitioner had already been granted opportunity to further cross-examine PW-1 and it was only because of filing of CRM-M-37226-2021 and passing of order for adjourning the proceedings pending before the trial Court beyond the date fixed, that the petitioner could not further cross-examine PW-1 nor he could ask for the same. Further, when the trial Court started recording statements of witnesses in view of the direction given vide order dated 25.08.2023 passed in petition bearing CRM-M-18395-2023 to expedite the trial and record evidence and after examining remaining witnesses of the prosecution, its evidence was closed by order of



the Court, then on 16.01.2024, he had moved an application on 23.01.2024 for apprising the trial Court that PW-1 Veer Singh was still to be cross-examined in compliance of order dated 26.08.2021 but the said application had been dismissed. It is submitted that by rejecting the prayer of the petitioner to let him further cross-examine PW-1, the learned trial Court had reviewed its own order which was beyond its competence while ignoring that it was under compelling circumstances that the petitioner could not cross-examine PW-1 till 02.07.2024 i.e. the date of passing order of withdrawal of CRM-M-37226-2021. It is further submitted that once a right was created in favour of the petitioner to cross-examine PW-1 again, the same could not have been taken away by the learned trial Court in the manner that had been adopted by it while passing the impugned order and therefore, it is urged that the said order is liable to be set aside, the petition deserves to be allowed and he deserves to recall PW-1 for his further cross-examination.

4. Per contra, learned State counsel assisted by learned counsel for Smt. Paramjit Kaur has vehemently argued that there is no infirmity in the impugned order and the same is very much sustainable. It is argued that on passing of order dated 25.08.2023 in CRM-M-18395-2023, whereby second petition for grant of regular bail was dismissed but direction had been given by a Co-ordinate Bench of this Court to expedite the trial and to conclude it preferably within a period of six months, that the learned trial Court had started recording statements of the remaining witnesses. Till 16.01.2024 i.e. the date when the evidence of prosecution was closed by order of the Court,



the petitioner had not raised any question with regard to not recalling of PW-1 Veer Singh and it was only after closure of the evidence that he had moved an application on 23.01.2024. It is argued that since the trial Court had refused to take any action on the application filed by the petitioner by passing order dated 25.01.2024 and the said order had not been challenged by the petitioner at all, therefore, he did not have any right to seek recalling of PW-1 at any subsequent stage and the application was not maintainable. With these broad submissions, it is urged that the petition is devoid of any merits and is liable to be dismissed.

5. I have heard learned counsel for both the parties at considerable length and have gone through the record carefully.

6. Certain facts are required to be discussed before coming to the question of the maintainability of the petition. It is not in dispute that during the course of recording prosecution evidence and after examining PW-1 Veer Singh, the petitioner had moved an application under Section 311 of Cr.P.C. for recalling him for conducting his further cross-examination. Annexure P-2 is copy of order dated 26.08.2021 showing that the said application was allowed by the learned trial Court and PW-1 was ordered to be summoned for further cross-examination. It is also not disputed that Smt. Paramjit Kaur mother of the victim of case bearing FIR No. 102 dated 10.10.2015, filed a petition CRM-M-37226-2021 challenging the order dated 26.08.2021 and vide order dated 13.09.2021 passed in the said petition, the trial Court was directed to adjourn the proceedings of the case beyond the date fixed.

Meaning thereby that the learned trial Court was not to record statement of



PW1- Veer Singh by recalling him till any further order was passed. This petition has been withdrawn subsequently by order dated 02.07.2024 (Annexure P-1) by Smt. Paramjit Kaur and obviously thereafter, the petitioner had become entitled to get the order dated 26.08.2021 passed by trial Court enforced by recalling of PW-1 and that is why, he moved application before the learned trial Court for that purpose. This prayer has been declined by the learned trial Court by observing that since after passing of order dated 25.08.2023, the trial Court had started recording evidence of prosecution witnesses and had closed the prosecution evidence on 16.01.2024 and as application moved by the petitioner on 23.01.2024 had been dismissed by a detailed order dated 25.01.2024 which had not been challenged, therefore, he no more remained entitled to seek recall/ further cross-examination of PW-1 Veer Singh. In view of this factual matrix, the contentions raised by the parties are to be considered.

7. For the sake of convenience, the relevant portion of the order dated 26.08.2021 as passed by the learned trial Court is reproduced as under:-

“Perusal of the file reveals that as per allegations the accused Manish Parbhakar had fired shots at deceased Harpreet Singh while other persons were also accompanying him at that time. PW-1 Veer Singh used to prepare earthen vessels near the place of occurrence and is eye witness. Perusal of his examination in chief and cross examination shows that some of the facts as pleaded in the application have not been put to him. Some facts had come to the knowledge of counsel for accused/applicant at later stage. Accused cannot be denied opportunity to further cross examine the witness



only on the ground that they were earlier granted full opportunity to cross examine the witness. Keeping in view all these facts, the application filed by the accused under Section 311 Cr.P.C. is allowed and PW-1 Veer Singh is ordered to be summoned for further cross examination. PW-1 and remaining unexamined witnesses be summoned for 14.09.2021.”

9. Then the relevant portion of the order dated 25.08.2023 passed by the Co-ordinate Bench of this Court in CRM-M-18395-2023 which was filed by the petitioner seeking regular bail, is reproduced as under:-

“8. Consequently, this Court is of the view that considering the conduct of the petitioner whereby the allegation against him was that while he was on bail in the present case he had shot at the complainant who was also witness of the case, the petitioner does not deserve the concession of regular bail notwithstanding the fact that the petitioner is already on bail in the aforesaid case under Section 307 IPC.

9. Consequently, the present petition is hereby dismissed.

10. However, anything observed hereinabove shall not be treated as an expression of opinion on merits of the case and is only meant for the purpose of decision of present petition.

11. However, this Court is also of the considered view that since the custody of the petitioner is very large and now the learned trial Judge has also reported that every effort is being made to secure the presence of the witnesses at the earliest, it will be just and proper to direct the learned trial Court to expedite the trial on priority basis due to the reason that the custody of the petitioner is very large. It is directed that every effort shall be made by the learned trial Court to conclude the trial as expeditiously as possible and preferably within a period of six months from today.



12. *A copy of this order be sent to the learned trial Court”.*

10. It is also revealed from the record that the trial Court did not proceed further with the trial after passing of order dated 13.09.2021. After passing of order dated 25.08.2023, whereby directions were given to the trial Court to conclude the trial expeditiously, it proceeded to record the remaining prosecution evidence and closed the same vide order dated 16.01.2024. On a perusal of the contents of Annexure P-7, which is copy of order dated 25.01.2024, it is revealed that the petitioner moved an application on 23.01.2024 thereby intimating the trial Court that in pursuance of order dated 26.08.2021, further cross-examination of PW-1 Veer Singh was still to be conducted. However, learned trial Court dismissed this application by observing that no further action was required to be taken in application filed by the petitioner.

11. The question for consideration before this Court is as to whether the learned trial Court could decline the petitioner to further cross-examine PW-1 Veer Singh due to reasons set out in the impugned order as well as in the order dated 25.01.2024. In this context, this Court considers it important to say that since the Co-ordinate Bench of this Court in CRM-M-37226-2021 had given direction to the trial Court to adjourn the proceedings pending before it beyond the date fixed by the said Court, the same amounted to giving direction to not to record prosecution evidence, especially statement of PW-1 Veer Singh till further directions were issued in that regard. However, after passing of order dated 25.08.2023 in CRM-M-18395-2023 whereby direction has been given to expedite the trial, the



learned trial Court proceeded further and started recording statements of the prosecution witnesses and closed the prosecution evidence on 16.01.2024, despite the fact that till that date, the petitioner had been contesting the CRM-M-37226-2021.

12. Though while passing the impugned order dated 25.01.2024, learned trial Court observed that the order dated 13.09.2021 as passed in CRM-M-37226-2021, thereby adjourning the case beyond the date fixed could not be construed to be extended after one date but in my considered opinion, the said interpretation was not correct because once an order had been passed in CRM-M-37226-2021 to adjourn the case beyond the date fixed, unless specific directions were issued to proceed further, the learned trial Court should not have presumed that there was no order for keeping the proceedings in abeyance.

13. No doubt, the learned trial Court was also bound to abide the order dated 25.08.2023 passed in CRM-M-18395-2023, as it is not revealed from the same that the factum of passing of order dated 13.09.2021 in CRM-M-37226-2021 was brought by the petitioner to the notice of the Co-ordinate Bench at that time and therefore, the action of the learned trial Court in recording statements of remaining witnesses after passing of this order also cannot be stated to be unwarranted, however, at the same time, it is to be seen that as soon as the learned trial Court closed the evidence of prosecution by Court order, the petitioner immediately moved an application giving intimation about the fact that the CRM-M-37226-2021 was pending.

The learned trial Court did not choose to take any action on that application



for the reasons best known to it. However, only due to the fact that the petitioner did not challenge the order dated 25.01.2024, in my opinion, did not disentitle the petitioner from asking the learned trial Court to recall PW-1 for the purpose of further cross-examination after withdrawal of CRM-M-37226-2021 on 02.07.2024. Technically, it was only after withdrawal of the above said petition that the petitioner had become entitled to again seek recall of PW-1 in terms of order dated 26.08.2021 and this is what had been exactly done by him. The learned trial Court was however, swayed by the fact that in the meanwhile, an FIR bearing No. 131 dated 18.10.2019 had been lodged against the present petitioner on the allegations of making attempt to kill PW-1 (though subsequently, he had even been acquitted in that case). While passing the order dated 25.01.2024, the learned trial Court observed that the petitioner had pressurized PW-1 which led to his turning hostile. There appears to be no basis for arriving at this conclusion. Then while passing the impugned order, the trial Court mainly took into consideration the observations made in the order dated 25.01.2024 and while doing so, the learned trial Court did not consider the plea that the order dated 26.08.2021 was in very much existence and had not been set aside by any competent Court of law and therefore, the learned trial Court was required to abide by the same. It could not review this order by making observations as shown to be made by it. Once the challenge to order dated 26.08.2021 by filing CRM-M-37226-2021 had been withdrawn by Smt. Paramjit Kaur, the order dated 26.08.2021 had again become effective and the rights so accrued in favour of the petitioner could not have been curtailed. The learned trial



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Court while passing the impugned order is infact shown to have reviewed the order dated 26.08.2021 which it was not competent to do. As such, in my considered opinion, the impugned order dated 06.08.2024 is not sustainable and is liable to be set aside. It is ordered to be set aside accordingly. Direction is given to the learned trial Court to recall PW-1 Veer Singh and to grant sufficient opportunity to petitioner to further cross-examine this witnesses. However, simultaneously, the petitioner is also directed to further cross-examine PW-1 on the same date when he appears for that purpose and no further adjournment shall be sought by him for the purpose of cross-examination of PW-1.

14. Petition stands disposed of accordingly.
15. A copy of this order be sent to the trial Court.

[MANISHA BATRA]
JUDGE

27th August, 2024

Parveen Sharma

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| 1. Whether speaking/ reasoned | : | Yes |
| 2. Whether reportable | : | Yes |