

2024:PHHC:117478



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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CRM M-43940 of 2024
Date of Decision: 05.09.2024

Sushil ...Petitioner
Versus
State of Haryana and another ... Respondents

CORAM : HON'BLE MR. JUSTICE N.S.SHEKHAWAT

Present : Mr. Sudhir Rana, Advocate, for the petitioner.

N.S.SHEKHAWAT, J. (Oral)

1. The petitioner has filed the present petition under Section 528 of Bharatiya Nagarik Suraksha Sanhita, 2023 with a prayer to quash the order dated 14.08.2024 (Annexure P-3) passed by the Court of Additional Sessions Judge, Karnal, in case bearing No. SC-374-2022 arising out of FIR No. 270 dated 07.04.2022 under Sections 427 and 436 IPC registered at Police Station Assandh, District Karnal, whereby, the petitioner was not granted an opportunity to cross-examine PW1 Shiv Kumar.
2. Learned counsel for the petitioner contends that respondent No. 2 had got FIR No. 270 dated 07.04.2022 under Sections 427 and 436 IPC registered at Police Station Assandh, District Karnal. He further contends that in the present case, the charge against the petitioner was ordered to be framed on 17.09.2022.

Thereafter, the case was listed for prosecution evidence on 11.11.2022, 10.01.2023, 20.03.2023, 10.05.2023, 29.07.2023 and till this date, the prosecution did not examine any witness. During the course of trial, on 22.05.2024, PW1 Shiv Kumar was present in the Court, however, he could not be examined as the Court time was over. So, he was discharged and bound down to appear for his evidence on the date fixed and the case was adjourned to 14.08.2024. On 14.08.2024, the case was taken up and the examination-in-chief of PW1 Shiv Kumar was recorded and a request was made on behalf of the defence counsel that he would appear at 02.00 p.m. on the same day. In the post lunch session, i.e., after 02.00 p.m., again the case was taken up and Shiv Kumar PW1 was present in the Court. However, the defence counsel could not cross-examine PW1 Shiv Kumar and due to this, the cross-examination of the witnesses was shown as “Nil” (opportunity given). Challenging the said order, the petitioner has filed the present petition before this Court.

3. At this stage, this court is not issuing notice to the respondent just to save the time, energy and the expenses of the respondent. However, in case the respondent/complainant feels that there is a concealment in the petition, he will be at liberty to move an appropriate application before this Court for revival of the present petition.

4. I have heard learned counsel for the petitioner and perused the record carefully with his assistance.

5. In the present case, the FIR was got registered by PW1 Shiv Kumar and he was the most material witness of the prosecution. However, he could not be cross-examined as the defence counsel could not appear before the trial Court for conducting the cross-examination. More so, the witnesses, whose cross-examination is sought to be conducted by the defence, is the prime prosecution witness being the complainant of the FIR as also the victim. Even otherwise, the cross-examination of this witness is indeed pivotal to the case of the defence. Even, the right to cross-examine a witness, vested in the prosecution/accused during the course of the criminal trial as an infallible right which cannot be withered away. Moreover, the trial Court in a criminal trial have to take a participatory role. They have to monitor the proceedings in the aid of justice in a manner that something, which is not relevant, is not unnecessarily brought into the record. Still further, in the present case, it is apparent that before lunch, learned counsel for the petitioner/accused had requested that he would appear at 02.00 p.m. to cross-examine the witness. But it is apparent from the record that the defence counsel was directed to cross-examine PW1 Shiv Kumar, but the defence counsel could not appear to cross-examine the witness. Apart from that, vide the impugned order, the Court had ordered that cross-examination of PW1 Shiv Kumar shall be written as “Nil” (opportunity given). In fact, the trial Court clearly failed to appreciate that the procedure of the Court is to elicit necessary materials by playing an active role in

the evidence collecting process. They have to monitor the proceedings in the aid of justice in such a manner that everything, which is relevant, is brought on record. Even if a counsel is remiss in some ways, it can control the proceedings effectively so that ultimate objective, i.e., truth is arrived at. Even otherwise, the Court cannot afford to be wishfully or pretend to be blissfully ignorant/oblivious to such pitfalls and dereliction of duty on the part of the lawyers on both the sides. Thus, in the present case, the trial Court should have granted an effective opportunity to cross-examine PW1 Shiv Kumar.

6. As a consequence to the above discussion, the impugned order dated 14.08.2024 (Annexure P-3) is set aside and the learned counsel for the petitioner is permitted to cross-examine PW1 Shiv Kumar, in accordance with law and one effective opportunity may be granted to the petitioner subject to payment of Rs.20,000/- as costs, which shall be paid to the complainant by the petitioner before the trial Court, before granting opportunity to the petitioner.

7. The petition stands disposed off.

05.09.2024
amit rana

(N.S.SHEKHAWAT)
JUDGE

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