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127 IN THE HIGH COURT OF PUNJAB AND HARYANA
CHANDIGARH

CRM-M-45496-2024 (O&M)

Date of Decision: 12.09.2024

AMARJIT SINGH

...Petitioner

V/S

STATE OF PUNJAB AND ANOTHER

...Respondents

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Sachin Kalia, Advocate
for the petitioner.

Mr. Sandeep Kumar, DAG Punjab.

HARPREET SINGH BRAR J. (Oral)

1. Present petition has been filed under Section 528 of Bharatiya Nagarik Suraksha Sanhita seeking quashing of impugned order dated 23.08.2024 (Annexure P-1) passed by learned Additional Sessions Judge, Ludhiana in FIR No. 51 dated 08.03.2024 registered at Police Station Sahnewal, District Police Commissionerate, Ludhiana under Section 376 and 511 of Indian Penal Code (later on Section 511 of IPC was deleted) and Section 6 of Protection of Children from Sexual Offences Act, 2012, whereby learned ASJ, Ludhiana, treated the cross examination of material prosecution witnesses as '**Nil being opportunity given**'.

2. The present FIR had been registered on the statement of the complainant-Tejasvi W/o Vishal Kumar alleging therein that she is a household lady and used to give tuition classes to the children living nearby. Her husband namely Vishal Kumar runs a mobile repair shop and they have two daughters together. The elder daughter was 7 years old and younger one was about 2 ½ years at the time of the alleged occurrence. On 08.03.2024, at

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about 03:45 pm, victim i.e. younger daughter of the complainant went to the park, situated in front of their house, to play. At about 04:00 pm, the complainant noticed that the victim did not return. On this the complainant went to the park to trace the victim but she was not there in the park. Subsequently, the complainant went to the house of the petitioner, where she found that one of the rooms was bolted from inside. Upon knocking, the said room was opened by the petitioner and the victim was inside the room having biscuits in her hand. The complainant entered the said room and thereupon, on her asking, the victim told her that the petitioner was tickling her and pointed towards her private parts to this effect. On the basis of aforesaid allegations, FIR(supra) was registered.

3. Learned counsel for the petitioner, *inter alia*, contends that the learned trial Court has fallen into grave error by curtailing the petitioner's right to cross-examine the prosecution witnesses on 26.07.2024, since, PW-1, PW-2, PW-3 and PW-4 were present and were examined in a single day, however, PW-4, Dr. Charan Kamal, was not even summoned for the said date. The cross-examination of the said prosecution witnesses were deferred as the counsel for the petitioner before the trial Court wanted to go through the statements of the prosecution witnesses. Therefore, the case was adjourned to 03.08.2024 for remaining witnesses as well as cross-examination of PW-1 to PW-4. On 03.08.2024, no prosecution witness was present except PW-5-Dr. Anupriya, who was duly examined on that day. Subsequently, the case was adjourned for remaining witnesses and cross-examination of prosecution witnesses. It is further contended that the petitioner was aggrieved by the charges framed against him, therefore, he

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moved an application under Section 239 of BNSS on 16.08.2024 for alteration of charges.

4. Thereafter, the learned trial Court procured the presence of the witnesses by issuing bailable warrants and adjourned the case to 21.08.2024. On the said adjourned date, though PW-1 and PW-3 were present, however, they could not be examined due to paucity of time. Moreover, the application filed by the petitioner under Section 239 of BNSS was also dismissed by the learned trial Court vide order dated 21.08.2024. The adjournment post the dismissal of the application under Section 239 of BNSS was only sought to challenge the order dated 21.08.2024 before this Court. However, vide impugned order dated 23.08.2024, learned trial Court, without assigning any reason, treated the cross-examination of PW-1 and PW-3 as **‘Nil being opportunity given’**. Learned counsel submits that the curtailment of the petitioner’s right to cross-examine PW-1 and PW-3 would be detrimental to the cause of fair trial as it would take away the opportunity to discredit the narrative put forward by respondent No. 2 against the petitioner and also weakens his defence.

5. Having heard learned counsel for the petitioner and after perusing the record of the case with his able assistance, the matter is taken up for final disposal. A perusal of the impugned order reveals that the defence counsel for the petitioner did not come for whole of the day on 21.08.2024 and the said PW-1 and PW-3 kept on waiting for whole of the day for the purpose of their cross-examination. However, instead of cross-examination PW-1 and PW-3, learned defence counsel moved an application under Section 239 of BNSS. The said application moved under Section 239 of

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BNSS was dismissed by the trial Court on 21.08.2024 being non-maintainable, however, despite that learned counsel for the petitioner did not examine PW-1 and PW-3 on 21.08.2024. The said witnesses were bound down for 23.08.2024, however, on the said date also the counsel for the petitioner did not examine PW-1 and PW-3 third time as he wanted to go to the High Court. Under these circumstances, the impugned order came to be passed by the trial Court.

6. This Court is of the considered opinion that, as far as possible, efforts must be made to ensure that the parties involved are allowed to present the best available evidence as that would lend credibility to the judicial proceedings. Denial of an opportunity, especially to the accused, to present the best available evidence or have an effective and substantial hearing, in order to prove his defence is in direct violation of the right to free and fair trial enshrined under Article 21 of the Constitution of India as well as the principles of natural justice. Hence, the learned Court below ought not to have unnecessarily curtailed the precious right of the defence to cross-examine the prosecution witnesses. Reliance in this regard can be placed upon the judgment rendered by the Hon'ble Supreme Court in ***Nipun Saxena and another vs. Union of India and other 2019(1) R.C.R. (Criminal) 334.***

7. Accordingly, the present petition is disposed of in the following terms:

- (i) The petitioner is granted one effective opportunity to cross-examine PW-1 and PW-3 subject to cost of Rs. 2,000/- payable to District Legal Services Authority, Ludhiana.

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(ii) In case the peitioner fails to deposit the said cost as well as to cross-examine PW-1 and PW-3 on the date to be scheduled by trial Court for the said purpose due to any reason whatsoever the impugned order dated 23.08.2024 (Annexure P-1) passed by learned Additional Sessions Judge, Ludhiana, shall enure.

8. Pending miscellaneous application(s), if any, shall also stand disposed of.

12.09.2024
Ajay Goswami

(HARPREET SINGH BRAR)
JUDGE

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