



223

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-54987-2023
Date of Decision:- 19.07.2024

DALBIR SINGH @ BHOLA
Vs.
STATE OF PUNJAB & ANR.
....Petitioner
...Respondents

CORAM:-HON'BLE MRS. JUSTICE AMARJOT BHATTI

Present:- Mr. R.P. Dhir, Advocate for petitioner.
Mr. Amandeep Singh, DAG, Punjab.

AMARJOT BHATTI, J. (Oral)

1. Petitioner Dalbir Singh @ Bhola has filed petition under Section 482 Cr.P.C. for giving direction to summon Gurnam Singh (PW5) and Satnam Singh (PW7) for recording of their cross-examination in FIR No.144 dated 07.07.2005 under Sections 307, 323, 324, 325, 148 and 149 IPC, registered at Police Station City, District Hoshiarpur in case titled “State of Punjab Vs. Balroop Singh @ Roop and others.
2. Learned counsel for petitioner argued that in the aforesaid trial chargesheet was framed on 13.03.2007 which is Annexure P-1. During the proceedings of trial Dalbir Singh was declared proclaimed offender on 12.11.2010 and he again joined proceedings on 15.12.2021. Examination-



in-chief of Gurnam Singh (PW5) and Satnam Singh (PW7) was recorded in his presence. However, both the witnesses were cross-examined by other learned counsel for the accused facing trial in this case in the absence of Dalbir Singh. As per record aforesaid witnesses appeared in the Court for cross-examination but it was recorded that Sh. Satpal Bharwal, Advocate for accused Dalbir Singh stated that cross-examination conducted by counsel for remaining accused be read on behalf of present accused. Copies of statements of Gurnam Singh (PW5) and Satnam Singh (PW7) are Annexure P-4 and P-5. In-fact on that day, Sh. Satpal Bharwal, Advocate was present in the Court of Additional Sessions Judge, Kangra at Dharmshala (H.P.). Copy of zimni order dated 20.05.2022 is Annexure P-6. Therefore, Sh. Satpal Bharwal, Advocate was not in a position to give aforesaid statements regarding cross-examination of Gurnam Singh (PW5) and Satnam Singh (PW7). Application was filed under Section 311 Cr.P.C. for recalling aforesaid witnesses for the purpose of cross-examination on behalf of Dalbir Singh but it was declined vide order dated 03.08.2023 (Annexure P-7). Aforesaid order passed by learned ASJ, Hoshiarpur is without justification. Therefore, same be quashed and aforesaid witnesses be recalled for cross-examination by the counsel representing Dalbir Singh.

3. Learned counsel representing State argued that order dated 03.08.2023 (Annexure P-7) does not require any interference. On that day counsel representing Dalbir Singh stated that earlier cross-examination conducted on Gurnam Singh (PW5) and Satnam Singh (PW7) be read towards the case of Dalbir Singh accused. Later-on by filing application under Section 311 Cr.P.C. said witnesses cannot be recalled.



4. I have considered arguments and have gone through the record. Factual position is not disputed that Gurnam Singh (PW5) and Satnam Singh (PW7) were cross-examined by counsel for other accused when Dalbir Singh was declared proclaimed offender. On appearance of Dalbir Singh accused, witnesses were recalled for cross-examination. However, on 20.05.2022 when both witnesses were present in the Court for cross-examination, *Sh. Satpal Bharwal, Advocate for Dalbir Singh stated, "cross examination conducted by counsel for remaining accused on 09.04.2013 and the same be read on behalf of the present accused also"*. Copy of zimni order dated 20.05.2022 (Annexure P-6) shows that presence of Sh. Satpal Bharwal, Advocate was marked before Additional Sessions Judge, Kangra at Dharmshala (H.P.). It is rightly pointed out that counsel could not be present personally at both the places. Dalbir Singh petitioner joined proceedings in the trial from 15.12.2021. In criminal trial witnesses are examined in the presence of accused.

5. Considering the aforesaid discrepancy it will be appropriate to grant one opportunity to counsel for petitioner to cross-examine Gurnam Singh (PW5) and Satnam Singh (PW-7). Thus impugned order dated 03.08.2023 passed by learned Additional Sessions Judge, Hoshiarpur is not justified and same is accordingly set aside. Prosecution is directed to produce both witnesses namely Gurnam Singh (PW5) and Satnam Singh (PW7) before the trial Court and counsel for petitioner/accused Dalbir Singh is given only one effective opportunity to cross-examine them on the same day, without giving further adjournment.

Petition is, accordingly, disposed of.



6. My observations are made for the disposal of present petition and it will have no bearings on the merits of the case.
7. Pending miscellaneous application(s), if any, stand disposed of accordingly as well.

19.07.2024
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(AMARJOT BHATTI)
JUDGE

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