



CRM-M-63584-2024

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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

(132)

CRM-M-63584-2024
Date of Decision : 18.12.2024

Rajinder Singh ...Petitioner

Versus

Central Bureau of Investigation, SC-1, New Delhi ...Respondent

CORAM: HON'BLE MR. JUSTICE KULDEEP TIWARI

Present: Mr. A.D.S. Sukhija, Advocate
for the petitioner.

Mr. Deepak Sabherwal, Advocate
for the respondent-CBI.

KULDEEP TIWARI, J.(ORAL)

1. The gravamen, which is encapsulated in the instant petition, is the interim order dated 12.12.2024, passed by the learned trial Court concerned, whereby, the latter closed the defence evidence by Court's order, on behalf of the accused No.3, who is the petitioner-herein. The reasons assigned in the application is that despite summoning, the witness opted not to cause appearance and even the site plan, which the petitioner wants to prove on record, has already been proved by PW-51 (Investigating Officer).
2. Learned trial Court, has further observed that no prejudice will be caused to the rights of the accused, as the purpose of summoning the defence witness is already served, by virtue of the exhibition of site plan, which the petitioner wants to prove, by examining the SHO, P.S. Kotkhai, in his defence.
3. Learned counsel for the petitioner has submitted that first of all, the witness, who is sought to be summoned, is an official witness, and



therefore, he cannot brought that witness into the witness box, on his own, and therefore, he was rightly summoned by the learned trial Court concerned, and the summon which was sent, has been received back duly served. Despite that, he opted not to cause appearance. He further submitted that the learned trial Court, instead of closing the evidence of the petitioner, by Court's order, should have resort to summoning the witness, by adopting the other procedure, as envisaged under the Cr.P.C. Finally, he draws the attention of this Court, towards the cross-examination of PW-51 (Investigating Officer), wherein, it is recorded that the site plan is exhibited as D-27/PW-51, however, the same is ***"subject to prove"***.

4. The factual submissions, so made by the learned counsel for the petitioner, have not been controverted by the learned counsel for the respondent-CBI, who has caused appearance, by virtue of advance notice. However, he submitted that the trial is prolonged from the last seven years, and the instant petition is yet another example of dilatory tactics. He further submits that the site plan, which is already exhibited, would not cause any prejudice, if the defence witness is remained unexamined.

5. This Court has considered the rival submissions, as made by the learned counsel for the parties concerned.

6. From the perusal of the impugned order, this Court, cannot make any observation regarding the relevancy of the witness, rather what is observed that the site plan, which the petitioner want to prove, has already been proved on record, by virtue of examination of PW-51 (Investigating Officer).

7. This Court is of the considered opinion that the above said observation is factually, incorrect. The site plan is already exhibited, however,



the same is “*subject to prove*”. Therefore, the SHO of the police station concerned, is an essential witness to prove this document, and in case, an opportunity is not granted to the petitioner, this would tantamount to scuttling his right to lead defence, by not providing him adequate opportunity to defend himself.

8. Therefore, the order impugned before this Court, by filing the instant petition, as cast under Section 528 of the BNSS, requires interference of this Court. The order passed by the learned trial Court concerned, wherethrough, the defence of the petition has been closed by Court’s order, only to this extent is **set aside**. The learned trial Court concerned is directed to grant one opportunity to the petitioner, to examine the witness i.e. SHO, P.S. Kotkhai, in his defence, and the learned trial Court concerned, shall make compliance to the provisions of Cr.P.C., for making effective summoning to the defence witness concerned.

9. It is further made clear that no other opportunity shall be granted to examine any other witness, to the petitioner, other than the one mentioned hereinabove.

10. In view of the above, the instant petition is **allowed**.

(KULDEEP TIWARI)
JUDGE

December 18, 2024
Manpreet

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