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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRR-933-2024 (O&M)
Date of decision: 08.01.2025

Deepak

....Petitioner

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR**Present:** Ms. Neeru Bansal, Advocate
for the petitioner.

Ms. Geeta Sharma, DAG, Haryana.

Mr. K.D. Sehra, Advocate
for the complainant.**HARPREET SINGH BRAR, J. (ORAL)**

1. The present revision petition has been filed for quashing of impugned order dated 10.04.2024 passed by the learned Additional Sessions Judge, Sonapat in SC No.782/2021 titled as 'State of Haryana Vs. Deepak and another' in connection with FIR No.549 dated 09.09.2021 under Sections 148/149/302/506 of IPC (later on charge sheet under Sections 302/120-B of IPC and Section 25 of Arms Act) registered at Police Station Sonipat City, Sonapat, whereby, an application under Section 311 of Cr.P.C. filed by the petitioner for summoning and re-examination of PW-4-Surender has been dismissed.
2. Learned counsel for the petitioner *inter alia* contends that the learned trial Court has erred in dismissing the application filed by the petitioner



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under Section 311 of Cr.P.C. seeking an opportunity to cross-examine the material witness PW-4-Surender. The learned trial Court, in the impugned order, has recorded that the petitioner was represented by Sh. Rakesh Kumar, Advocate on 10.08.2022 and thereafter, Sh. Sandeep Sharma, Advocate appeared on behalf of the petitioner. Thereafter, on 21.03.2023, Sh. Rakesh Malhotra, Advocate, had appeared on behalf of the accused and on 03.04.2023, he conducted a comprehensive cross-examination of PW-4-Surender Singh along with Sh. R. A. Tyagi, Advocate. Learned counsel for the petitioner further refers to Annexure P-4 and submits that a perusal of the same clearly indicates that Sh. Rakesh Malhotra, Advocate and Sh. R. A. Tyagi, Advocate, were representing co-accused, namely, Pardeep, as also discernible from the copy of their power of attorney.

3. The petitioner was earlier represented by Mr. Sandeep Sharma, Advocate who has withdrawn his power of attorney, as evident from the zimini orders (Annexure P-2). As such, it is apparent on record that the petitioner was not granted any opportunity to cross-examine the material witnesses which is essential for the just decision of the case. Further, the denial of fair opportunity to cross-examine the material witnesses would be violative of the right of the petitioner as enshrined under Article 21 of the Constitution of India as well as the provisions contained under Section 240 (2) of Cr.P.C. Learned counsel for the petitioner further relies upon the judgments of this Court passed in 'Mohd. Nazar Vs. Mohd. Ilyas' CR No.312 of 2014 decided on 11.02.2016 and 'Tosiba Industries Ltd. and others Vs. State of Haryana and another' 2016 (1) R.C.R. (Criminal) 683.

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4. Per contra, the learned State counsel assisted by counsel for the complainant submits that the case was fixed for recording the statement of the accused under Section 313 of Cr.P.C. Further, this is the second application filed under Section 311 of Cr.P.C. just to fill the lacuna and to unjustly initiate a *de novo* trial.

5. Having heard learned counsel for the parties and on perusal of the record, this Court finds force in the arguments advanced by learned counsel for the petitioner. A perusal of the cross-examination of PW-4-Surender (Annexure P-8) clearly indicates that he was cross-examined by Sh. Rakesh Malhotra, Advocate and Sh. R. A. Tyagi, Advocate. Further, Annexure P-4 further indicates that both the Advocates were representing the co-accused, Pardeep. Moreover, once the power of attorney was withdrawn by Mr. Sandeep Sharma, Advocate, who previously represented the petitioner, the learned trial Court should have appointed a Legal Aid Counsel for the petitioner before proceeding further with the trial, especially, in view of the fact that the petitioner was confined in District Jail, Sonipat. As such, no effective opportunity to cross-examine a material witness was given to the petitioner.

6. Procedure is handmaid of justice and its goal is to make the ends of justice meet. In that vein, it must be understood that denial of an opportunity to the accused to present the best available evidence or have an effective and substantial hearing, in order to prove his defence, would amount to a direct violation of his right to free and fair trial enshrined under Article 21 of the Constitution of India as well as the principles of natural justice.

7. In view of the discussion above, the impugned order dated



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10.04.2024 is hereby set aside and the present petition is disposed of with a direction to the learned trial Court to grant two effective opportunities to the petitioner to cross-examine PW-4-Surender.

(HARPREET SINGH BRAR)
JUDGE

08.01.2025
Neha

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