



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

126

CRM-M-64008-2024
Decided on : 08.05.2025

Sarbjot Singh

. . . Petitioner(s)

Versus

State of Punjab

. . . Respondent(s)

CORAM: HON'BLE MR. JUSTICE SANJAY VASHISTH

PRESENT: Mr. Amrit Paul Nahar, Advocate
for the petitioner(s).

Mr. Luvinder Sofat, Sr. DAG, Punjab.

SANJAY VASHISTH, J. (Oral)

1. Petitioner has filed the present petition u/s 528 of BNSS, 2023, for seeking quashing of order dated 09.08.2023 (Annexure P-5), passed by learned JMIC, Hoshiarpur, whereby, application dated 25.01.2023 (Annexure P-4) filed by the petitioner for recalling of order dated 24.01.2023 (Annexure P-3), in case titled as, "State of Punjab v. Sarabjot Singh Etc.", arising out of FIR No.47, dated 20.04.2020, under Sections 279, 337, 338, 427 of IPC, registered at Police Station Chabbewal, District Hoshiarpur (Annexure P-1), has been dismissed.

2. Before proceeding further, order dated 24.01.2023 (P-3), passed by learned JMIC, Hoshiarpur, whereby, opportunity of cross-examination by counsel for the accused (petitioner herein) was ordered to be treated as 'nil', is reproduced here-under:-

*"Present: Sh. Rahul Dadwal APP for the State.
Accused on bail with counsel Sh. Vaneesh Rai Advocate*

PW1 Jatinder Singh Jaswal and PW2 Varinder Singh Jaswal



are present but not cross-examined as Ld. Counsel for accused not turned up despite repeated calls. This court finds no justification for further adjournment for cross-examination. Therefore cross-examination by Ld. Counsel for accused treated as nil after granting opportunity. Remaining unexamined PW's and doctor be summoned for 02.03.2023."

3. Learned counsel submits that thereafter, on the very next day, i.e., on 25.01.2023, petitioner filed an application (P-4) for recalling of order dated 24.01.2023 (P-3), however, the learned trial Court dismissed the said application vide impugned order dated 09.08.2023 (P-5). Even the revision petition filed by the petitioner against the impugned order (P-5) was dismissed by learned Sessions Judge, Hoshiarpur, vide order dated 27.09.2024.

4. Learned counsel further submits that if one opportunity is afforded to the petitioner (accused) to cross-examine the PW1 – Jatinder Sing Jaswal and PW2 – Varinder Singh Jaswal, subject to the payment of some cost amount as well, petitioner shall make all endeavours to cross-examine the aforesaid prosecution witnesses well in time. Rather, upon granting such an opportunity, the evidence of the petitioner can then be considered as complete evidence in the case, and thereafter, an appropriate decision can be taken by the Trial Court.

He also submits that in case such an opportunity is not granted and the request of the petitioner, as raised through the present petition, is declined, the petitioner may suffer irreparable loss at the final stage of the trial, thereby prejudicing his rights.

5. On the other hand, learned State counsel, while defending the order passed by the Trial Court, submits that the order passed by the Trial Court is perfect in law and no interference in the same is required in any manner. He further submits that granting another opportunity to the petitioner may prolong the proceeding and same may cause prejudice to the rights of the respondent



also. Therefore, petitioner should not be granted any further opportunity to offer himself for cross-examination.

6. After hearing learned counsel for the parties and perusing the relevant material available on record, following is noticed :-

- (i) Firstly, on being asked by the Court, learned State counsel informs that still the evidence of all prosecution witnesses is being recorded, and out of total 17 prosecution witnesses, only 7 have been examined so far. Therefore, allowing the prayer of the petitioner for cross-examination of the aforesaid two prosecution witnesses, i.e., PW1 – Jatinder Sing Jaswal and PW2 – Varinder Singh Jaswal, there would not be a situation of waisting of time and delaying the proceedings.
- (ii) Secondly, disposal of the trial/proceedings merely by taking into consideration the examination-in-chief of both the witnesses may deprive the Court from reaching to an appropriate conclusion/decision, which is always inherent quality/standard in all the judicial proceedings.

Though in the present case, it is recorded that the opportunity was granted, and thereafter, it was closed by mentioning “NIL”, yet it would not be out of place to mention that as per law of evidence, without there being any opportunity for cross-examination after examination-in-chief, such a statement carries no weight for its consideration.

7. Arguments advanced by the learned counsel for the petitioner, along with the reasons cited in the petition, appear to be convincing. Otherwise, there seems to be no plausible reason for the petitioner to intentionally avoid the cross-examination of the prosecution witnesses, namely; PW1 – Jatinder Singh Jaswal and PW2 – Varinder Singh Jaswal.

This Court, therefore, finds merit in the prayer made in the present petition, and accordingly, same is allowed. Consequently, impugned orders



dated 09.08.2023 (Annexure P-5) and 24.01.2023 (P-3) are hereby **set aside**, and the petitioner is afforded one effective opportunity to cross-examine the above-named prosecution witnesses before the conclusion of the trial proceedings.

However, this liberty shall be subject to the condition that the petitioner (accused) shall pay costs of Rs.20,000/-, to be equally distributed between the said prosecution witnesses (Rs.10,000/- each), in advance, prior to the conducting of their cross-examination.

It is also made clear that if the complainant or both the aforesaid witnesses, wishes to seek recalling of the present order, they may file an appropriate application within the reasonable time, however, in that situation, aforementioned amount of Rs.20,000/-, would be paid back to the petitioner.

8. With aforementioned observations, **present petition stands disposed of.**

(SANJAY VASHISTH)
JUDGE

May 08, 2025

J.Ram

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No