



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

136

CRM-M-12426-2025
Decided on : 05.03.2025

Hardeep Singh and another

... Petitioner(s)

Versus

State of Punjab

... Respondent(s)

CORAM: HON'BLE MR. JUSTICE SANJAY VASHISTH

PRESENT: Mr. Lakshay Bector, Advocate
for the petitioner(s).

Mr. Amandeep Singh, DAG, Punjab.

SANJAY VASHISTH, J. (Oral)

1. Instant petition has been filed by the accused – Hardeep Singh and Deepak, by challenging the order dated 06.05.2024, whereby, cross-examination of the complainant, has been treated as “NIL”. Subsequently, on moving an application dated 09.08.2024, under Section 311 Cr.P.C. for recalling of PW-Ram Baitha (complainant examined on 06.05.2024), has also been dismissed vide order dated 14.01.2025, and same is also assailed by the petitioners before this Court.

2. Before proceeding further, it would be apt to notice both the orders, passed by the trial Judge in the proceedings of FIR No. 210, dated 07.11.2022, under Sections 379-B, 34 and 411 of IPC, registered at P.S. Sadar, Ludhiana.

Firstly, the order dated 06.05.2024, whereby, the cross-examination of the witness was recorded as ‘NIL’, says as under:-

“ *Accused Arun Kumar produced by the Jail Authorities. He*



be again produced on 24.05.2024 till then he is remanded in judicial custody.

Accused came present. The complainant/PW had come present. The evidence of complainant/PW was recorded in the presence of the accused persons. The complainant/PW Ram Baitha identified the accused present in the present case in the Court. After the identification, they were asked to bring their counsel. The counsel came after some time but he gave the lame excuse and submitted to the Court that he would come after some time. Thereafter, the case was called several times but neither the accused came present nor the counsel came, due to which the signatures of the accused persons could not be appended. It seems that the intentional hurdles are being created to harass the witness. It is already 04.30pm, accordingly, the cross examination of PW is treated as NIL, despite the fact that several opportunities was given.

Nonailable warrants issued to ASI Major Singh received back unserved. Let fresh nonailable warrants be again issued to him for 24.05.2024.”

Another order dated 14.01.2025, whereby, application u/s 311 Cr.P.C. has been dismissed, is also reproduced here-under:-

“ Accused Arun Kumar not produced by the jail authorities. Let production warrants of accused be issued with the direction to produce the accused in the Court on 13.2.2025.

2. Heard on application under Section 311 Cr.PC moved by the accused/applicants Deepak and Hardeep through their Counsel for recalling P.W Rama Betha – complainant for the purpose of cross examination.

3. In the application, it has been submitted by Ld. Counsel for the accused/applicants that the cross examination of P.W Rama Betha - complainant was treated as ‘Nil’ due to the negligence of the previous Counsel and wrong advice given to them. It has been submitted that the cross examination of complainant/witness is necessary. It has further been submitted that the law with regard to Section 311 Cr.PC is liberal. Prayer has been made to recall the complainant for cross examination by allowing the present application.

4. On the other hand, Ld. Addl.P.P for the State while filing reply to the aforesaid application has submitted that the accused/applicants are taking undue benefit of the process of the Court.



The witness was present for cross examination but due to the act and conduct of the accused/applicants cross examination did not take place. Prayer has been made to dismiss the application.

5. *The perusal of the file reveals that on 6.5.2024 the complainant Ram Baitha came present in the Court. His statement was recorded in the presence of the accused persons. The complainant had identified the accused persons. After the identification of the accused/applicants, the accused were asked to bring their Counsel. The Ld. Counsel for accused/applicants came to the Court after some time and gave excuse and left the Court with the assurance to come after some time. Thereafter, the accused were called several times but neither accused came present nor their Counsel came present. This Court had specifically observed that the intentional hurdles are being created to harass the witness. Therefore, at 4:30 PM the cross examination of the witness was treated as 'Nil' despite having given sufficient opportunities to the accused to cross examine the witness.*

No doubt, the law with regard to the provisions of Section 311 Cr.PC for recalling the witness is liberal and the accused/applicants are not to be condemned unheard but it does not mean that accused persons should misuse the process of the Court. The accused persons on 6.5.2024 were present in the Court and for this reason the complainant had identified the accused persons to have committed the offence. Ld. Counsel for the accused/applicants had also come present in the Court and left the Court by giving excuse that he would come after some time. Thereafter, neither accused came present nor Ld. Counsel came present. The witness was harassed for the whole day as he had to wait till 4:30 PM. The Court also waited for the accused persons as well as their Counsel to appear in the Court on that day for conducting cross examination of the witness. The accused persons had misused the process of the Court by not turning up in the Court. The whole conduct of the accused is incorporated in the ximni order dated 6.5.2024.

6. *The plea has been taken in the application that the accused persons were wrongly advised by their Counsel. No explanation has come as to why the accused persons had not filed anything against the previous Counsel before the Bar Council of Punjab and Haryana.*

7. *It seems that the accused/applicants have taken up clever excuse by blaming the Counsel. The prosecution or the witness cannot be made to suffer at the hands of the accused persons for their own negligence/over cleverness. The explanation as given in the application*



for not cross examining the witness on that day is not satisfactory whereas the conduct of the accused/applicants as well as their Counsel has been duly reflected in the zimni order dated 6.5.2024. Thus, under these circumstances, considering the conduct of the accused/applicants, present application under Section 311 Cr.PC is without any merit and same stands dismissed.

8. Case stands adjourned to 13.2.2025 for remaining prosecution evidence. The case being Action Plan Case, process be issued forthwith.”

3. Counsel for the petitioners submits that due to closing of the opportunity of cross-examining the material witnesses a great prejudice has been caused to his rights, more for the reason that he is on defending side. The proceedings could have been deferred for a shorter date also, by considering the necessity and importance of the cross-examination of the witness. Thus, the orders impugned before this Court are liable to be set aside, by granting reasonable opportunity to the petitioner to conduct the cross-examination of the already recorded witnesses qua whom it is recorded 'cross-examination NIL', on account of no fault of the accused himself/themselves.

4. On advance notice, Mr. Amandeep Singh, DAG, Punjab, who is already possessed with the brief of the case, while defending both the orders, argues that for the fault of the petitioners, no one can be blamed. Once the petitioners have engaged their counsel, it has to be chosen by them only, whether the required cross-examination is to be conducted or not ?

Once they have waived of the right of cross-examining the witnesses, same cannot be claimed throughout the trial proceedings.

5. I have considered the submissions addressed by both the sides and examined the orders impugned through present petition.



6. Moreover, it is the right of every accused that he cannot be punished without making an opportunity of hearing. Once, the liberty of cross-examination is taken away without granting any further adequate opportunity, which ought to have been, would definitely amounts to violation of natural justice and the trial proceedings would become futile towards the version of the prosecution.

7. From the order dated 06.05.2024, it is clear that there is no fault of the petitioners/accused persons. It was the representing counsel of the petitioners who failed to appear before the Court below, and due to his non-appearance, the trial Court inferred that no cross-examination would be conducted at the instance of the accused and, therefore, recorded it as “NIL.”

To ensure an impartial decision at the end of the trial and also transparency in it's proceedings, trial Court ought to have either granted another opportunity for cross-examination by adjourning the proceedings to a shorter date or appointed an *Amicus Curiae*/legal aid counsel for completing the statement of the material witness by appreciating the inability of the petitioners – accused.

Additionally, argues that some relevant questions could have been asked by the trial Court itself also. However, by not resorting to any of such methods, as suggested before this Court, by the petitioners' counsel, the accused have been prejudiced *qua* their rights. Therefore, the order requires to be set aside by granting an adequate opportunity to the petitioners to conduct cross-examination to the best of their ability and satisfaction. Thus, petitioners also challenge the resultant order dated 14.01.2025.

The aspect highlighted before this Court, should have been



specifically considered by the trial Court for the purpose of granting an opportunity for the cross-examination of witnesses.

8. From the view point of this Court and the submissions addressed by the petitioners' counsel, there appears to be some substance in the present petition.

To avoid any eruption and doubt in the mind of the accused, who are facing the criminal trial before the trial Court, it is imperative upon such Court to adhere itself to all the aspects, such as those which have been addressed before this Court and the same having been recorded here-above.

9. Therefore, this Court is of the view that petitioners are entitled for affording reasonable and effective opportunity for cross-examination of the witness, whose chief has already been recorded and cross-examination is mentioned as 'NIL'.

Accordingly, the present petition is allowed and the impugned orders dated 06.05.2024 and 14.01.2025, are hereby **set-aside**. Petition stands **disposed of** accordingly.

Let this exercise be completed before conducting of further proceedings in trial Court.

(SANJAY VASHISTH)
JUDGE

March 05, 2025

J.Ram

Whether speaking/reasoned: Yes/No
Whether Reportable: Yes/No