

(2022) 07 P&H CK 0160

In the Punjab And Haryana At Chandigarh

Case No : Criminal Miscellaneous Petition (M) No. 29851 Of 2022

Raman Kumar

APPELLANT

Vs

State Of Haryana And Anr

RESPONDENT

Date of Decision : 14-07-2022

Acts Referred:

Indian Penal Code, 1860 — Section 302

Code Of Criminal Procedure, 1973 — Section 311, 313

Citation : (2022) 07 P&H CK 0160

Hon'ble Judges : Sureshwar Thakur, J

Bench : Single Bench

Advocate : Rahil Mahajan, Tanuj Sharma

Final Decision : Dismissed

Judgement

Sureshwar Thakur, J

1. The present petitioner is an accused in FIR No.784 of 02.11.2020, registered at Police Station Jagadhari City, District Yamuna Nagar, wherein an offence constituted under Section 302 of IPC, becomes embodied.

2. It is submitted at the bar, by the learned counsel for the petitioner that, the trial which has commenced in respect of the petition FIR, as, drawn against the accused, has reached rather the stage of proceedings under Section 313 of Cr.P.C., becoming drawn against the accused.

3. Be that as it may, after the completest recordings of the depositions of PW-1, and, PW-2, the learned defence counsel instituted an application cast, under Section 311 of Cr.P.C. In the above application, he claimed relief, for the recalling of PW-1, and, of PW-2 for further cross-examinations being conducted, upon them. The reason thereof, as set forth in the application, is comprised in the factum, that during the course of the cross-examination of PW-2, she did not initially identify the accused, through video conferencing, and, in respect thereof, she gave an explanation that, the brightness on the screen, was less rather when

the accused was asked to be identified by her, in Court. However, it is stated in the application that, subsequently, she disclosed that she was able to recognize the accused, as the person who made a fatal assault, on the person, of the deceased. It is for the above reason that, the learned defence counsel asked for the making of a further cross-examination or for the recalling of PW-1 for further cross-examination. Moreover, the learned defence counsel in the above application also asked for the re-examination of PW-2, and/or, for his making further cross-examination of PW-2. The cross-examination of PW-2 is extracted hereinafter.

"...I have seen the accused today for the first time after the day of incident. It is correct that initially, I could not identify the accused through video conferencing when he was shown to me. Volunteered that there was less brightness on the screen. The accused was all alone when he was shown to me through video conferencing and I have to recognize him. My near vision is defective for reading only..."

4. The further reason as set forth in the application, as instituted for the relevant purpose, is stated to arise from his lack of communication(s), and/or, his inability to interact with the accused, for eliciting from him relevant assistances rather for certain material exculpatory suggestions being meted to the PWs' (supra), whereas, they were necessary for becoming meted to them for enabling the defence to efficaciously carry forth its defence.

5. In so far as the above prayer is concerned, it is completely rudderless, and, is declined, as it is stated at the bar, by the learned counsel for the petitioner that, in the proceedings which occurred through video conferencing the learned defence counsel was assisted by the accused. Therefore, if certain suggestions with respect to the penal incident, which may have been then meted, to the prosecution witnesses concerned, and, which remained unmeted to them, and, which became subsequently realized to be meteable to them, through theirs being asked to be re-examined, through an order being made by the learned trial Judge concerned, thereupon any curings of omissions of the learned defence counsel to earlier mete the relevant suggestions, to the PWs (supra), becomes a premeditated attempt, and/or, an impermissible attempt to cure the apposite defect, and, to create/invent fresh evidence besides to unnecessary harass, and, vex the PWs concerned, moreso, when he became assisted at the relevant stage, by the accused, thereupon too, he cannot lawfully strived to undo or cure the relevant omission through an application cast, under Section 311 of Cr.P.C.

6. Moreover, reiteratedly if the above permission is granted, thereupon it would lead to an undesirable consequence, inasmuch as, the defence, through making the above endeavour striving to improve, upon or making an untenable effort to cure the apposite defects, as, comprised in its not meteings suggestions, which were otherwise meteable earlier during the course of the witness concerned, being subjected to cross-examination. Since the defence counsel concerned, has to be completely awakened to the meteings of the apposite suggestions, and/or,

qua the necessity of putting them as appropriate exculpatory defences, to the witness concerned, when he earlier puts him/her into cross-examination. Therefore, his subsequent awakenings from slumber would obviously, as stated above become, an impermissible recourse, to undo all the omissions which he earlier made, while putting exculpatory suggestions to the witnesses concerned. If he so desires, he can lead defence evidence after termination of the proceedings under Section 313 of Cr.P.C.

7. There is no merit in the petition, and, the same is dismissed. The impugned order of 06.05.2022, is affirmed, and, maintained.