

(2018) 02 J&K CK 0066
In the Jammu And Kashmir High Court
Case No : CRREV No.65 OF 2016

SANJAY KUMAR AND ANOTHER	Vs	APPELLANT
STATE OF JAMMU & KASHMIR		RESPONDENT

Date of Decision : 09-02-2018

Acts Referred:

Jammu and Kashmir State Ranbir Penal Code, 1989 — Section 212, 341, 376,
Code of Criminal Procedure, 1973 — Section 272(1), 272(2)

Citation : (2018) 02 J&K CK 0066

Hon'ble Judges : JANAK RAJ KOTWAL

Bench : Single Bench

Final Decision : Disposed Of

Judgement

1. In the trial for offence under Sections 376, 341 and 212 R.P.C. arising in FIR No.43/2016 of Police Station, Khour, the trial court recorded statement of PW-1, ShakuntlaDevi, the mother of the victim, in her chief-examination on 30. 09. 2016. Her cross-examination, however, was deferred as defence counsel was not present on that day and the case was adjourned to 18. 10. 2016. On 18.10.2016 the defence counsel moved an application seeking permission of the trial court to permit him to cross-examine PWs 1 to 6 after the chief-examination of all of them is recorded on the ground that all of them are members of the same family, they have been cited as important witnesses and the line of defence shall get exposed in case they are cross-examined one by one. This application was filed under Section 272 (2) of the Code of Criminal Procedure (for short the Code). The trial court dismissed this application on the same day primarily taking the view that the witness is a lady who has to come from far-flung place so deferring her statement as desired by the defence counsel will amount to

persecution of the witness.

2. In addition the trial court observed that the contention that PWs 1 to 6 belong to the same family is not supported by cogent proof and that it

was very difficult to admit that defence of the accused will be disclosed by cross-examining PW-1. The learned trial court, while impliedly

accepting that PW1 could be a material witness as the victim might have narrated the incident to her, however, took the view that adjournment for cross-

examination of the witness in a criminal case will give wrong signal to the society and will also affect the trial of the case and the witnesses

produced by the prosecution may also be subjected to undue harassment. The trial court relied upon the Supreme Court judgments

in *N.G. Dastane vs. Shrikant S. Shivde*, AIR 2001 SC 2028 and *Mohd. Khalid vs. State of West Bengal*, (2002) SCC 3343 and thus, rejected the

prayer of the defence and adjourned the case for recording the cross-examination of PW-1. Order dated 18. 10. 2016 passed by the trial court is

impugned by the petitioner (accused) in this revision petition.

3. Learned counsel for the petitioner submitted that Section 272 (2) of the Code confers a valuable right on the defence to seek deferment of

cross-examination of material prosecution witnesses till examination in chief of all of them is recorded. This provides a safeguard to the

accused by not disclosing the line of defence by cross-examining the prosecution witnesses one by one and thereby incurring the risk of giving chance

to the remaining prosecution witness(es) to fill up the lacunae in prosecution case, as they may emerge in the cross-examination of a witness.

4. Mr. S.S. Nanda, learned Sr. AAG, however, supported the impugned order.

5. Section 272 is comprised in the Chapter XXIII of the Code that lays down the procedure of trial before a Court of Session. It deals with

the production of prosecution evidence in a session trial. Sub-Section (1) of Section 272 provides that on the date fixed for prosecution evidence,

the trial Judge shall proceed to take all such evidence as may be produced in support of the prosecution. The taking of evidence of a prosecution

witness would mean recording his chief-examination, cross-examination and the re-examination, if any. Sub Section (2), however, makes a provision

for deferring the cross-examination of a prosecution witness after recording his chief-examination, besides recalling any prosecution witness for

further cross-examination. Sub-Section (2) reads:

“(2) The Judge may, in his discretion, permit the cross-examination, of any witness to be deferred until any other witness or witnesses have been examined or recall any witness for further cross-examination.”

6. Sub-Section (2) of Section 272 of the Code is too clear in its scope and meaning. It does not permit en bloc deferment of cross-examination of all the prosecution witnesses or a group of them. What is permissible under Sub-Section (2) is that trial judge may in his discretion defer cross-examination of a

particular witness until another witness or witnesses have been examined. When such permission should be granted is not indicated in Sub-section (2).

Since the deferment of cross-examination of a witness is to be permitted until any other witness or witnesses have been examined, exercise of

discretion will be guided by the nature of evidence of the witness whose cross-examination is sought to be deferred and the evidence of the

witness(es) until recording of whose evidence deferment is sought. If evidence of two or more witnesses is interrelated the trial judge may on the

request of the defence exercise the discretion of deferring the cross-examination of one of them until evidence of the other or others is recorded.

7. The prayer made for en bloc deferment of cross-examination of six witnesses by defence counsel, therefore, was not in consonance with the spirit

of Sub-Section (2) of Section 272 of the Code and on that score trial court was justified in rejecting the prayer. However, the reasoning recorded by the

learned trial judge cannot sustain nor the ratio of the authorities relied upon by the learned trial judge is applicable as the same does not relate to

Section 272(2). Once deferment of cross-examination of a prosecution witness is sought by the defence under Section 272 (2), deferment can be

allowed or refused within the parameter of the said provision and not on ancillary consideration like convenience of the witness or possibility of any

wrong signal to the society as has been observed by the learned trial Judge. “What the trial Judge has to see in dealing with request”

“is, whether prejudice is likely to be caused to the accused by cross-examining a witness before evidence of any other witness

or witnesses have been recorded and it would be in the interest of justice to defer his cross-examination.

8. In the case on hand, PW-1 is mother of the victim. She had lodged the

report, as rightly observed by the learned trial Judge, on the basis of information provided to her by the victim. Without dilating much, I would say precisely that deferment of her cross-examination until evidence of the victim has been recorded will meet the ends of justice and prayer to that extent should have been allowed.Â However, learned counsel for the petitioner could not make out a case for deferment of cross- examination of all the six witnesses.

9. Viewed, thus, the impugned order is modified by providing that learned trial court shall allow deferment of the cross-examination of PW-1 until evidence of the victim, including her chief-examination, cross-examination and reexamination, if any, is recorded.

10. Registry shall send a copy of this order to the trial court.

11. Disposed of.