
(2014) 12 P&H CK 0103

In the Punjab And Haryana At Chandigarh

Case No : Crl. Revn. Nos. 3823, 3825, 3880 and 3998 of 2014

Sant Gurmeet Ram Rahim Singh

APPELLANT

Vs

CBI

RESPONDENT

Date of Decision : 17-12-2014

Acts Referred:

Constitution of India, 1950 — Article 21
Criminal Procedure Code, 1973 (CrPC) — Section 243, 243(2), 313
Penal Code, 1860 (IPC) — Section 376, 506, 509

Citation : (2015) 1 RCR(Criminal) 316

Hon'ble Judges : Daya Chaudhary, J

Bench : Single Bench

Advocate : S.K. Garg Narwana, Senior Advocate and Gurdas Singh Salwara, Advocates for the Appellant; Sukhdeep Singh Sandhu, Advocates for the Respondent

Judgement

Daya Chaudhary, J.—By this judgment, four petitions bearing Crl. Revn. Nos. 3823, 3825, 3880 and 3998 of 2014 shall stand disposed of as the issues in all the petitions are more or less the same. For the sake of convenience, facts are being extracted from Crl. Revn. No. 3823 of 2014. Briefly the facts of the case are that petitioner is facing trial in case FIR No. RC 5(S)/2002/SIU-XV/CHG dated 12.12.2002 for offence punishable under Sections 376, 506 and 509 IPC registered at Police Station Special Crime Branch, CBI, Chandigarh. The said FIR was registered on the directions issued by this Court on 24.9.2002 in Crl. Misc. No. 26994-M of 2002 dated 24.9.2002 as writ jurisdiction was invoked by this Court on its own motion in respect of an anonymous complaint. The chargesheet was filed against accused-petitioner on 30.7.2007 and case was committed to the Court of Additional Sessions Judge, CBI for trial for offences punishable under Sections 376, 506 IPC on 6.9.2008. The prosecution submitted a list of total 28 witnesses, out of which, 15 were examined during the period from 2008 to 2013. On 3.9.2013, the evidence of the prosecution was closed and statement of accused was recorded under Section 313 Cr.P.C. on 11.2.2014. Thereafter, the

accused-petitioner submitted a list of 98 defence witnesses, out of which some were examined and some were found to be dead. Even some of the witnesses who were not part of the list were also allowed to be examined, some witnesses were given up as they were not found to be available on the address given in the list. Vide impugned order dated 15.11.2014, the list of defence witnesses was curtailed and defence was allowed to examine D.W.-Tek Chand Sethi. It was also mentioned in the said order that in case accused wants to examine himself as defence witness, an application can be moved in this regard.

2. Order dated 15.11.2014 is now the subject matter of challenge in Crl. Revn. No. 3823 of 2014. After passing of aforesaid order i.e. dated 15.11.2014, the petitioner moved another application to examine Ms. Sudesh, Sh. Dharam Singh, Sh. Mohan Singh and Sh. Gurdial Singh, which was dismissed on 29.11.2014. Thereafter two more applications were also moved by the petitioner with the same request, which were dismissed on the ground that Court cannot review or recall its own order.

3. Learned senior counsel for the petitioner by challenging the impugned order submits that there was no delay on the part of petitioner as defence of the petitioner started in the month of February, 2014 itself, whereas, the prosecution took more than four and a half years to conclude the prosecution evidence. Learned senior counsel contends that curtailing of list of witnesses amounts denial of fair trial whereas earlier the petitioner was allowed to examine all witnesses but subsequently without hearing the counsel for the petitioner and without giving any sufficient reason, list was curtailed. Learned senior counsel further contends that the finding recorded by the trial Court is contrary to the facts as an opportunity of hearing was required to be given to the petitioner before passing of order of curtailing list of witnesses. Learned senior counsel also submits that examination of the witnesses is necessary to prove the innocence of the accused and the impugned order has been passed contrary to the provisions of Section 243(2) of Cr.P.C. Learned senior counsel has also relied upon the judgments of Hon"ble the Apex Court in the cases of Abdul Basit Vs. Abdul Kadir Choudhary, , Surendra Singh v. State of Bihar 2006 (2) Criminal Court Cases 367 (SC), Hari Singh Mann Vs. Harbhajan Singh Bajwa and Others, , Natasha Singh Vs. CBI (State), , Ronald Wood Mathams Vs. State of West Bengal, , Girjanandan Singh Vs. Emperor, , Panchu Swain Vs. Emperor, , Bissay Vs. Emperor, , Zahira Habibulla H. Sheikh and Another Vs. State of Gujarat and Others, , Vijay Kumar Vs. State of U.P. and Another, , of Kerala High Court in T.N. Janardhanan Pillai Vs. State, and of P.R. Ramakrishnan Vs. P. Govindarajan in support of his contentions.

4. Learned counsel appearing on behalf of the CBI submits that the impugned order is self-speaking, well reasoned and has been passed after considering the submissions of both the sides. The satisfaction of the Court has also been recorded, wherein, it has been mentioned that the purpose of defence by giving a long list of witnesses is not only to delay the proceedings but misuse of process of law. The impugned order has been passed by taking into consideration all the

facts and hearing the parties. Some of the witnesses mentioned in the list are not only unnecessary but they have no concern with the allegations of rape in any manner. Learned counsel further submits that wrong addresses of some of the witnesses have been given and some have already expired. Learned counsel has also relied upon the judgment of Hon"ble the Apex Court in the case of Akil @ Javed Vs. State of NCT of Delhi, in support of his contentions.

5. Heard the arguments advanced by learned senior counsel for the petitioner as well as CBI and have also gone through the impugned order as well as other documents available on record.

6. The registration of FIR, presentation of challan and framing of the charge have not been disputed by the counsel for the parties. It is also an admitted fact that the charges were framed on 6.9.2008 and CBI closed its evidence on 3.9.2013. The defence evidence commenced on 22.2.2014 and impugned order was passed on 15.11.2014. Upto the date of passing of the order, the petitioner examined 29 witnesses in his defence evidence and 6 witnesses were given up, whereas, 3 witnesses could not be examined as they have died. The petitioner supplied list of 98 witnesses to adduce evidence in defence. Some of the defence witnesses could not be served as they were not found to be residing at the given address. Vide impugned order dated 15.11.2014, list of defence witnesses was curtailed on the ground that a long list of witnesses has been prepared just to delay the proceedings of the case and there is no relevancy of those witnesses to prove the charge of the rape. The motive of the petitioner is to cause delay in disposal of the trial as some of the witnesses have no relevancy with the offence as the rape was committed in a closed room where only the accused and the prosecutrix were present and none else was present. Section 243 Cr.P.C. is relevant to decide the issue in dispute, which is reproduced as under:--

"243. Evidence for defence. (1) The accused shall then be called upon to enter upon his defence and produce his evidence; and if the accused puts in any written statement, the Magistrate shall file it with the record.

(2) If the accused, after he has entered upon his defence, applies to the Magistrate to issue any process for compelling the attendance of any witness for the purpose of examination or cross- examination, or the production of any document or other thing, the Magistrate shall issue such, process unless he considers that such application should be refused on the ground that it is made for the purpose of vexation or delay or for defeating the ends of justice and such ground shall be recorded by him in writing:

Provided that, when the accused has cross-examined or had the opportunity of cross- examining any witness before entering on his defence, the attendance of such witness shall not be compelled under this section, unless the Magistrate is satisfied that it is necessary for the ends of justice.

(3) The Magistrate may, before summoning any witness on an application under sub-section (2), require that the reasonable expenses incurred by the witness in

attending for the purposes of the trial be deposited in Court."

7. Undisputedly, the Court is empowered to curtail the list of witnesses and to refuse to examine some of the witnesses mentioned in the list but the satisfaction of the Court should be based on some reasoning to show that the purpose is to delay the proceedings of the case. As per the arguments advanced by learned senior counsel for the petitioner, the Court has no discretion to refuse to examine the witnesses or to curtail the list of witnesses without giving an opportunity to the accused. Undisputedly the purpose of furnishing a list of witnesses and documents to the Court is to offer an opportunity to the Court to peruse the list. In case the Court thinks that examination of some of the witnesses mentioned in the list is quite unnecessary to prove the evidence in defence and the time which would be needed in completing the examination of such witnesses would result in procrastination, the Court is empowered to curtail such list. In case the court feels that such list is supplied only to delay the proceedings, the Court is well within its power to disallow even all of the witnesses mentioned in the list to be examined. Sub-section (2) of Section 243 of Cr.P.C. not only empowers but mandates the Court to issue process for compelling the attendance of any witness for the purpose of examination or cross-examination or for production of any document or any other thing on the application made by the accused. It is for the Court to form an opinion that in case the purpose is to delay the proceedings or defeating the ends of justice, then it should be recorded in writing. One thing is clear that while exercising powers by the Court the reasons are necessary to be recorded. The rejection of the application without giving any reason whatever is unfair as it would amount to denial of fair opportunity to either party. The purpose and object of the provision is to enable the Court to determine the truth to reach to a just decision after discovering all relevant facts.

8. It is also the duty of the Court to ensure that such fair opportunity granted to either of the party should not hamper the proceedings in any manner. The petitioner-accused has the right to defend himself as it is his fundamental right as enshrined under Article 21 of the Constitution of India. The accused cannot be convicted without an opportunity being given to him in defence as the fair trial includes fair opportunities allowed by law to prove innocence. Adducing evidence in support of defence is a valuable right and denial of such right means denial of fair trial as has been held by Hon"ble the Apex Court in the case of Kalyani Baskar Vs. M.S. Sampooram .

9. In the present case while passing the impugned order the trial Court has reached to the conclusion that the object of the accused is to delay the proceedings as some of the witnesses in the list of witnesses supplied have died, some were not found to be residing at the given addresses. No doubt the impugned order of curtailment of list is not beyond the competency of the Court but the accused party was required to be given an opportunity of being heard to show the relevancy of those witnesses to be examined in defence evidence.

10. During course of hearing of the arguments, learned senior counsel for the petitioner has fairly stated that he is ready to give up some of the witnesses and out of supplied list, he undertakes to examine only 24 witnesses. The argument raised by learned senior counsel for the petitioner that earlier a list of witnesses was allowed by the trial Court and subsequently curtailment amounts to review of its earlier order is not accepted being not permissible under law. This submission cannot be accepted as it is not review of the earlier order. It is for the Court to see whether the examination of witnesses would cause delay or not. In the earlier order also, it was mentioned that the relevancy will be seen after going through the statements of some of the witnesses for the decision of the controversy in dispute.

11. Keeping in view the submissions and undertaking given by learned senior counsel for the petitioner and also the fact that learned counsel for CBI has not been able to show that the persons who were cited as witnesses had already expired before the submission of the list or not. It may be possible that after preparation of the list of witnesses, some of the witnesses might have expired and accused-petitioner may not be having any knowledge regarding their deaths.

12. Accordingly, the petitions are allowed and impugned orders dated 15.11.2014, 1.11.2014, 29.11.2014 and 6.12.2014 are set aside being passed without hearing the accused party.

13. The petitioner is directed to give a list of 24 witnesses as has been submitted by learned senior counsel for the petitioner before the trial Court from the list already supplied by showing their relevancy. In case still the trial Court is of the view that some of the witnesses, which are necessary to be examined keeping in view the offence, they be examined. In case the Court comes to the conclusion that some of the witnesses are not necessary to be examined, then the defence version be heard and necessary order be passed after hearing the accused party. However, the trial Court is also directed to make all efforts to conclude the trial as early as possible preferably within a period of six months.