

(2019) 11 SHI CK 0101
In the High Court Of Himachal Pradesh
Case No : Criminal Revision No. 466 Of 2019

Virender Singh

APPELLANT

Vs

State Of H.P

RESPONDENT

Date of Decision : 22-11-2019

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 313
Indian Penal Code, 1860 — Section 302

Citation : (2019) 11 SHI CK 0101

Hon'ble Judges : Sureshwar Thakur, J

Bench : Single Bench

Advocate : N.S Chandel, Vinod Gupta, Yudhveer Singh Thakur, Vikrant Chandel

Final Decision : Allowed

Judgement

Sureshwar Thakur, J

1. After closure of the prosecution evidence, and, also after conclusion of the proceedings, drawn, under Section 313 of Cr.P.C, the accused had projected their aspiration to adduce defence evidence. The accused ensured, the, stepping into the witness box, on, 12.7.2019, of, one DW namely Anjana Devi. However, on the afore date she was only examined in chief, and, on the request of the learned PP concerned, the cross- examination of the afore witness was deferred. On the afore date, the learned trial Judge, listed the matter, for, 9.8.2019, rather for, the recording of the depositions of the remaining defence witnesses.

2. On 9.8.2019 the learned defence counsel, had given up, DW Raksha Devi. However DW Anjana, for, whose cross- examination, the matter was listed on 9.8.2019, rather remained un-cross-examined thereat, as, the learned defence counsel moved, an application seeking therethrough, permission for her becoming exempted, for, the requisite purpose, on the stated grounds, as, carried in the requisite application. Another DW one Sandesh, though, became served for 9.8.2019, yet was constrained to record her appearance, before the

learned trial Judge, and, also the requisite exemption application, came to be allowed, and, thereafter the learned trial Judge, ordered for recording, of, the depositions of the afore DWs, on 13.9.2019.

3. However, through the impugned order, the learned trial Judge, though, becoming seized with an application, for seeking exemption from personal appearance, of, DW Anjana Devi, and, with averments becoming cast therein vis-a-vis ailments besetting her, and, also despite medical prescription slips becoming appended therewith, yet declined the espoused relief, qua the defence, merely, for the reasons, vis-a-vis, the afore witness not becoming demonstrated to be admitted, to, hospital, nor becoming demonstrated, to, become disabled to travel up to the Court, consequently, the defence evidence became closed. The afore order is challenged before this Court.

4. Apparently, the afore made reasons, for, hence rejecting the exemption application, filed, vis-a-vis, the afore DW Anjana Devi, are, per se flimsy. Moreso, when the accused are facing trial for commission of offence punishable under Section 302 of I.P.C, and, unless the completest availed opportunities, stand granted to the accused, the, resultant sequel would be, vis-a-vis, their defence becoming prejudiced.

5. Further more, even the striking off, through the impugned order, rather, the, already recorded examination-in- chief of DW Anjana Devi, also, adds to the agony to the defence, and, also prejudices the defence counsel's espousal, and, warrants interference.

6. In view of the above, the present petition is allowed, and, the impugned order is quashed and set aside, and the learned trial Judge is directed, to, as a last opportunity ensure service through Court notice, upon, the remaining DWs, for, their completest testimony becoming recorded before it. All pending applications stand disposed of accordingly.