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PUNJAB AND HARYANA HIGH COURT

Before: Sanjay Kumar, J.

CRR No.3485 of 2016

Decided on: 14.10.2020

Santokh Singh and another

Petitioners

Versus

State of Punjab

Respondent

Present:

Mr. P.B.S. Goraya, Advocate for the petitioners.

Mr. H.S. Multani, Assistant Advocate General, Punjab.

Code of Criminal Procedure, 1973 (2 of 1974), Section 311 – Fair trial – Cross-examination – Right of -- Application u/s 311 Cr.P.C. to place on record certain documents was allowed, no witness was recalled or examined for the purpose of proving the additional record and the same was taken on file straightway – Petitioners filed application u/s 311 Cr.P.C to recall witnesses for the purpose of cross-examining them in relation to the additional record -- Application dismissed on the ground that the petitioners could lead defence evidence and examine any official from the concerned department – Held, denial of the petitioners' right of cross-examination cannot be countenanced -- It is a valuable right given to the accused and such right cannot be diluted in this fashion -- Approach adopted by the learned ASJ negated the very basic and fundamental norms of a fair trial – Direction given to Id. ASJ to recall the witnesses for further cross-examination and proceed thereafter with the case in accordance with law – Revision allowed.

(Para 10-14)

SANJAY KUMAR, J. –

1. This revision under Section 397 Cr.P.C arises out of the order dated 17.05.2016 passed by the learned Additional Sessions Judge/Special Judge, Tarn Taran, in Sessions Case No.RBT/PC/2/14.09.2009. This case pertained to FIR No.12 dated 13.02.2009 on the file of Police Station Vigilance Bureau, Amritsar, registered under Sections 409 and 120-B IPC and Sections 13(1) (d) r/w 13(2) of the Prevention of Corruption Act, 1988.

2. The petitioners in this revision are the accused in the said case.

3. Earlier, the State filed an application under Section 311 Cr.P.C seeking to produce certain records relevant to this case. This application was ordered by the learned Additional Sessions Judge on 15.09.2014, observing that no prejudice would be caused to the accused as they would be given full opportunity to cross-examine the witnesses and rebut the said record. However, the records seem to have been taken on file without recalling the relevant witnesses. Thereupon, the petitioners filed an independent application under Section 311 Cr.P.C to recall Ashok Kumar, DSP (PW1), Surjit Singh, Superintendent, BDPO (PW4), and Harjit Singh, Junior Engineer (PW7), for further cross-examination.

4. However, by the order dated 17.05.2016, presently under revision, the learned Additional Sessions Judge disallowed their plea on the ground that the case had reached Section 313 Cr.P.C examination stage. The learned Additional Session Judge observed that it would be open to the petitioners to lead defence evidence by examining any official and that no ground was made out to allow further cross-examination.

5. Aggrieved by this turn of events, the petitioners filed the present revision.

6. By order dated 24.09.2016, this Court noted the aforestated sequence of events and observed that the opportunity of cross-examination and to avail the benefit granted by the earlier order dated 15.09.2014 could not have been snatched away by directing the petitioners to lead defence evidence. This Court noted that the right of the petitioners to cross-examine the witnesses in the context of the record produced by the prosecution was the basic ingredient of a fair trial and depriving them of such opportunity of cross-examination would cause prejudice to them. The trial Court was accordingly directed not to pass a final order.

7. This Court is informed that the next date of hearing fixed before the trial Court is 21.10.2020 and that the case still remains at the stage of examination of the accused under Section 313 Cr.P.C.

8. Heard Mr. P.B.S. Goraya, learned counsel for the petitioners, and Mr. H.S. Multani, learned Assistant Advocate General, Punjab.

9. Section 311 Cr.P.C empowers the Court to summon or examine any person or recall or re-examine any person if his evidence appears to it to be essential to just decision of the case.

10. Admittedly, the State took recourse to this provision when it wanted to place on record certain documents which had not been produced earlier and the said application was allowed on 15.09.2014, observing that the petitioners, being the accused in the case, would be given full opportunity to cross-examine the witnesses and rebut the said record. Significantly, this order concluded with the statement that the prosecution was permitted to produce and prove the record. However, it is an admitted fact that no witness was recalled or examined for the purpose of proving the additional record and the same was taken on file straightway.

11. This compelled the petitioners to file a fresh application under Section 311 Cr.P.C to recall Ashok Kumar, DSP (PW1), Surjit Singh, Superintendent, BDPO (PW4), and Harjit Singh, Junior Engineer (PW7), for the purpose of cross-examining them in relation to the additional record. Surprisingly, the learned Additional Sessions Judge seems to have completely overlooked the earlier order dated 15.09.2014 passed by his predecessor and dismissed the application on the ground that the petitioners could lead defence evidence and examine any official from the concerned department.

12. Denial of the petitioners' right of cross-examination cannot be countenanced. It is a valuable right given to the accused and such right cannot be diluted in this fashion. As pointed out by this Court in the interim order, the approach adopted by the learned Additional Sessions Judge negated the very basic and fundamental norms of a fair trial.

13. In that view of the matter, the trial Court of the learned Additional Sessions Judge/Special Judge, Tarn Taran, is directed to recall Ashok Kumar, DSP(PW1), Surjit Singh, Superintendent, BDPO (PW4), and Harjit Singh, Junior Engineer (PW7), for further cross-examination and proceed thereafter with the case in accordance with law.

14. The revision is accordingly allowed.

Petition allowed.



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