

extended uncertain lease of employment—for such a long time is equally a matter which ought to engage attention of the policy makers.

(8) In the light of foregoing discussion, the petition shall stand allowed. The impugned order dated 2nd January, 2006 (Annexure P6) declining family pension to the petitioner shall stand quashed. The respondents are directed to sanction family pension to the petitioner with effect from the date of death of her husband. The petitioner should be entitled to the arrears thereof as well with effect from that date, with interest @ 9% per annum.

---

**R.N.R.**

***Before T.P.S. Mann, J***

**RESHMA,—Petitioner**

***versus***

**STATE OF PUNJAB,—Respondent**

Criminal Revision No. 2347 of 2006

30th November, 2007

***Code of Criminal Procedure, 1973—S.401—Narcotic Substances and Psychotropic Substances Act, 1985—S.15—Investigating Officer in trial of petitioner under NDPS Act examined-in-chief—Counsel for petitioner not in a position to attend Court and failing to cross-examine the IO—Trial Court closing evidence of said witness—Statement of IO most relevant to outcome of trial—Petitioner entitled to one effective opportunity to cross-examine police officer—Petition accepted, trial Court directed to afford one effective opportunity to petitioner to cross-examine the said witness.***

*Held*, that in a case involving trial of an accused under section 15 of NDPS Act, the statement of the Investigating Officer would be most relevant to the outcome of the trial. Said Investigating Officer was the one who had recovered the contraband from the accused. If he is not allowed to be cross-examined by the defence, the fate of the accused would be sealed. An attempt can only be made to shatter his testimony if the accused is given an opportunity to cross-examine him. Advocate representing the

petitioner could not be present in the Court when SI was examined as PW9. The reason of absence of counsel from the Court was that his mother was indisposed.

(Para 4)

*Further held*, that the defence should be given one effective opportunity to cross-examine said SI Bhupinder Singh PW9 so that the defence of the petitioner is not prejudiced.

(Para 5)

Baltej Singh Sidhu, Advocate, for the petitioner.

R.K. Nihalsinghwal, Deputy Advocate General, Punjab.

***T.P.S. MANN, J***

(1) The petitioner has challenged the order passed by Judge, Special Court, Jalandhar on 31st October, 2006 whereby application of the petitioner for re-summoning Sub Inspector Bhupinder Singh, for the purposes of cross-examination, was dismissed.

(2) It is submitted on behalf of the petitioner that on 16th October, 2006, when SI Bhupinder Singh was examined as PW9, the counsel representing the accused was not present in the Court as he was busy attending his ailing mother. In the absence of the defence counsel, his junior informed the trial Court about his inability to be present in the Court to cross-examine the police official but instead of adjourning the case, the trial Court directed the junior counsel to go and call the senior counsel. However, as the defence counsel was not available in the Court complex but was at his place of residence, he could not be contacted and thus, could not come present. Instead of waiting for the defence counsel or adjourning the matter for some other date, the trial Court closed the evidence of SI Bhupinder Singh as "nil" in spite of opportunity having been given. It is submitted that the defence has to cross-examine SI Bhupinder Singh, as the entire case revolves around his testimony. Therefore, the impugned order be set aside and the defence be given one effective opportunity to cross-examine SI Bhupinder Singh.

(3) Learned counsel for the State submitted that sufficient opportunity was given to the accused to cross-examine SI Bhupinder Singh but the same was not availed and therefore, the trial Court had no option but to close the evidence of the said witness. Accordingly, it was submitted that the present petition be dismissed by upholding the impugned order.

(4) In a case involving trial of an accused under Section 15 of NDPS Act, the statement of the Investigating Officer would be most relevant to the outcome of the trial. Said Investigating Officer was the one who had recovered the contraband from the accused. If he is not allowed to be cross-examined by the defence, the fate of the accused would be sealed. An attempt can only be made to shatter his testimony if the accused is given an opportunity to cross-examine him. Mr. K.S. Hundal, Advocate representing the petitioner could not be present in the Court when SI Bhupinder Singh was examined as PW9. The reason of absence of Mr. Hundal from the Court was that his mother was indisposed. A request was made on his behalf by his junior counsel but instead of adjourning the case, the trial Court directed the said junior to go and fetch the defence counsel. There was no sufficient time with the junior counsel to contact Mr. Hundal and apprise him about the fact that he was wanted in the Court for cross-examining SI, Bhupinder Singh. Even if Mr. Hundal had been informed, he would not have been in a position to come to the Court and cross-examine SI, Bhupinder Singh on that date because he was busy in attending his ailing mother.

(5) In view of the above, this Court finds that the defence should be given one effective opportunity to cross-examine said SI, Bhupinder Singh PW9 so that the defence of the petitioner is not prejudiced.

(6) Accordingly, the revision is accepted. Order passed by Judge, Special Court, Jalandhar on 31st October, 2006 while dismissing the application of the petitioner for recalling SI, Bhupinder Singh is set aside. The trial Court is directed to afford one effective opportunity to the petitioner through her counsel to cross-examine Bhupinder Singh.

---

***R.N.R.***