

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CRM-M-13926 of 2015
Date of Decision : 30.04.2015

Raj Kumar @ Raja

.....Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE R.P. NAGRATH

1. *Whether Reporters of the local papers may be allowed to see the judgment?*
2. *To be referred to the Reporters or not?*
3. *Whether the judgment should be reported in the digest?*

Present: Mr. Ravinder Kumar Rana, Advocate
for the petitioner.

R.P. Nagrath, J.

Petitioner has invoked the jurisdiction of this Court under Section 482 Cr.P.C. for quashing of the order dated 07.04.2015 (Annexure P-3) passed by the trial Court vide which application of the petitioner-accused for recalling two witnesses PW-3 Shamsher Verma and PW-13 ASI Avtar Singh for their further cross-examination has been declined.

2. The petitioner is facing trial in FIR No. 236 dated 10.11.2013 for offences under Sections 460, 302 and 411 of Indian Penal Code (IPC), registered at Police Station Dera Bassi, Mohali. The version of the prosecution is that the petitioner alongwith co-accused tried to commit robbery in the ATM Machine of Indian Bank and caused the death of Alam Khan, security guard. The application was filed after examination of petitioner-accused under

Section 313 Cr.P.C.

3. It was stated in the application under Section 311 Cr.P.C. that the defence counsel while preparing arguments found that certain material questions were not inadvertently put to the aforesaid witnesses and those questions are very much required for just and proper decision of the case. The application was opposed by the State by filing reply (Annexure P-2).

4. I have heard learned counsel for the petitioner, perused the impugned order and the paper-book and find no substance in the instant petition.

5. Learned trial Court rejected the application with the following observations:-

“.....However, said material questions which could not be put to these witnesses have not been disclosed in this application. During the course of arguments, the learned counsel for the accused/applicant failed to disclose the said questions. Perusal of record shows that PW-3 Shamsher Verma, photographer was examined on 25.09.2014 and PW-13 ASI Avtar Singh was examined on 15.11.2014. They both were cross-examined at length by the accused. It appears that the present application has been filed by the accused just to delay the proceedings of this case. Hence, no ground is made out for recall of abovesaid witnesses for the purpose of their further cross-

examination by the accused.....”

6. It was not in dispute that the witnesses examined by the prosecution were extensively cross-examined and permitting to recall the witnesses without disclosing the material questions, proposed to be put, would amount to filling in the lacuna left in the case, which cannot be permitted.

7. Learned counsel for the petitioner further submitted that examination of these witnesses would bring improbability in the story. I am of the view that such is always a point of argument but that cannot be a reason to recall the witnesses.

8. The law is well settled that the powers can be exercised by the trial Court under Section 311 Cr.P.C. either *suo motu* or on an application by the either side for forming an opinion that recalling of the witnesses for further cross-examination is essential to the just decision of the case.

9. The discretion exercised by the lower court rejecting the application on valid grounds would not be interfered with in exercise of the discretion of this Court under Section 482 Cr.P.C.

10. No merit. Dismissed.

April 30, 2015
jk

(R.P. NAGRATH)
JUDGE