

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH.**

Crl. Misc. No.M-2559 of 2015

Date of Decision: 23.01.2015

Mukand Singh

....Petitioner

Versus

State of Punjab and others

....Respondents

BEFORE :- HON'BLE MRS. JUSTICE DAYA CHAUDHARY

- 1. Whether reporters of local newspapers may be allowed to see the judgment ?**
- 2. To be referred to reporters or not ?**
- 3. Whether the judgment should be reported in the Digest ?**

Present:- Mr. Munish Gulati, Advocate
for the petitioner.

DAYA CHAUDHARY, J. (ORAL)

This petition has been filed under Section 482 Cr.P.C for quashing of order dated 22.12.2014 passed by the Judicial Magistrate Ist Class, Moga, whereby, the application moved by the petitioner under Section 311 Cr.P.C for calling the witness, namely, Bhupinder Singh, Deputy Superintendent of Police, Baghapurana, Moga in case titled as "State vs Ashok Kumar" filed under Sections 420, 465, 467 and 471 IPC has been dismissed.

Learned counsel for the petitioner submits that initially, the case was investigated into by Bhupinder Singh, Deputy Superintendent of Police, Baghapurana, Moga but his name was not mentioned in the list of witnesses. The examination of said witness is necessary for just decision

of the case. Learned counsel also submits that the application moved by the petitioner has been dismissed only on the ground of delay and the name of said witness was not mentioned in the list of witnesses.

Learned counsel for the petitioner has also relied upon the judgments of this Court in cases ***Raj Kumar vs State of Haryana and others 2013(4) RCR (Criminal) 109*** as well as ***Rajwinder Kaur vs State of Punjab 2004(4) RCR (Criminal) 474***, wherein, it has been held that the trial Court has power to permit the prosecution to examine any witness though not named in the list of witnesses. The observation made in ***Rajwinder Kaur's*** case (supra) is reproduced as under :-

“3. After hearing the learned counsel for the petitioner and perusing the impugned order, I do not find any reason to interfere with the same at this stage when examination-in-chief of three witnesses has already been recorded, particularly when the petitioner will have an opportunity to cross-examine those witnesses on all aspects of the matter. **Even otherwise, ample power has been given to the trial Court under Section 311 of the Code to permit the prosecution to examine any witness though he is not named in the list of witnesses.** Once the trial Court has exercised its discretion and found that examination of the five witnesses is essential for the just decision of the case, I do not find any reason to interfere in the said discretion in the inherent powers of this Court.”

Without issuing any notice to the other party as not only the matter would be delayed but the other party would unnecessarily be burdened with expenses; the examination of said witness is necessary being the initial Investigating Officer; it is not disputed that the trial Court has power to examine any witness whose name is not mentioned in the list of witnesses; the case is squarely covered by the above referred

judgments, this petition is allowed and the impugned order dated 22.12.2014 passed by the Judicial Magistrate Ist Class, Moga is set aside and the trial Court is directed to examine the witness, namely, Bhupinder Singh.

23.01.2015
gurpreet

(DAYA CHAUDHARY)
JUDGE