

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-36828 of 2014 (O&M)

Date of Decision:23.7.2015

Parwinder Singh

....Petitioner

Versus

State of Punjab

....Respondent

CORAM: HON'BLE MS. JUSTICE NAVITA SINGH

Argued by: Mr. S.S. Siao, Advocate for the petitioner.
 Mr. B.S. Bhullar, DAG, Punjab for the respondent.
 Mr. Sandeep Jain, Advocate for respondent No.2.

NAVITA SINGH, J.

1. The petitioner had filed an application under Section 311 of the Code of Criminal Procedure (Cr.P.C. for short) for summoning Sukhwinder Singh as a prosecution witness. The application was dismissed by the trial Court stating that it was filed at a very belated stage when even defence witnesses had been examined. The said order dated 20.10.2014 has been challenged.

2. Counsel for the petitioner submitted that he is the complainant in relation to FIR No.129 dated 7.5.2011 registered under Section 3 (X) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act and Sections 148,323,341,452 read with Section 149 IPC in Police Station Zirakpur, District SAS Nagar and Sukhwinder Singh was an eye witness to the occurrence. The police had not named said Sukhwinder Singh in the list of witnesses in connivance with the accused. He had requested the Public Prosecutor to move an application for calling the said witness who assured the complainant that needful would be done but ultimately since the Prosecutor failed to move the application, the petitioner had to file it.

3. The State counsel as also counsel for respondent No.2 submitted that no such witness was named in the FIR and also during investigation the petitioner had not made any statement showing that Sukhwinder Singh was present or that he should be joined as a witness. Investigation was properly conducted and since the name of Sukhwinder Singh did not figure anywhere, he was not put in the list of witnesses.

4. Counsel for the petitioner argued that the accused belonged to Scheduled Caste and the witnesses joined by the prosecution were also of that caste. Sukhwinder Singh belonged to the general category and for that reason he was not made a witness by the prosecution. If the petitioner is not allowed to examine him, the accused would be acquitted. To counter these arguments, State counsel submitted that one of the witnesses, Gurnam Singh, did not belong to the caste of the accused and, therefore, the petitioner should have no grudge. Even Sita Ram, who appeared as a witness and belonged to the same caste as the accused, deposed in favour of the complainant.

5. Since eye witnesses have been named and also examined, it is felt that examination of Sukhwinder Singh is not necessary for effective adjudication of the matter. It may have come in evidence in the court that one Sukhwinder Singh was present at the relevant time, but the passing reference so made would not mean that he is a necessary witness.

6. Regarding delay, counsel for the petitioner relied on P. Sanjeeva Rao Vs. State of A.P. 2012 (7) SCC 56 where the Supreme Court allowed cross examination of a witness after four years. The situation in the said case was different because the witness had not been cross examined due to the mistake of the lawyers and request of the accused was allowed to prevent failure of justice.

7. In Mohanlal Shamji Soni Vs. Union of India and another AIR 1991 Supreme Court 1346 (1), the supreme Court held that power to summon any person as a witness could be exercised at any stage of the proceedings provided examination of that person was essential for just decision of the case. It has already been held above that the examination of the Sukhwinder Singh is not essential for effective trial as other eye witnesses already stand examined.

8. The petition is dismissed.

(NAVITA SINGH)
JUDGE

23.7.2015
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