

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

SANJIV KUMAR SHARMA
2015.02.24 11:25
I attest to the accuracy and
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CRM No. M-5120 of 2015 (O/M)

Date of decision : 18.2.2015

Nitin Bahri

..... Petitioner

Versus

State of Punjab

..... Respondent

CORAM: HON'BLE MR. JUSTICE KULDIP SINGH

Present:- Mr. Sarju Puri, Advocate, for the petitioner.

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

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KULDIP SINGH, J. (ORAL)

Petitioner, who is one of the accused in FIR No. 2 dated 8.1.2010, registered under Section 21 of the Narcotic Drugs and Psychotropic Substances Act, 1985, (in short 'the Act') at Police Station Rahon, District SBS Nagar, has challenged the order dated 6.2.2015, passed by the learned Judge, Special Court, SBS Nagar, whereby the prosecution has been allowed to re-examine HC Pawanjit Singh.

The brief facts, which require to be noticed for the purpose of disposal of this petition, are that on 23.1.2015, HC Pawanjit Singh was present and his cross-examination was recorded. At that very moment, the learned Additional Public Prosecutor for the State requested for re-examination of the witness,

which was opposed by defence counsel. Therefore, the Court adjourned the matter to for 2.2.2015 for arguments on the point. HC Pawanjit Singh was bound down for the said date. On 2.2.2015, the arguments were heard and the matter was adjourned to 6.2.2015 for orders. HC Pawanjit Singh was again bound down for the date fixed. On 6.2.2015, the request of the learned Additional Public Prosecutor for the State was allowed.

I have heard learned counsel for the petitioner and have also carefully gone through the file.

The perusal of the interim orders shows that the witness was cross-examined on 23.1.2015 when at that very moment, the learned Additional Public Prosecutor for the State had made a request for re-examination of the said witness as the said witness had made some statement in examination-in-chief and contradictory statement was made in cross-examination. It appears that examination-in-chief was conducted on the earlier date. Therefore, the Court heard both the parties, decided the matter and allowed the request of the learned Additional Public Prosecutor for the State for re-examination of the said witness.

The perusal of the interim orders shows that in examination-in-chief and cross-examination, the said witness had made different statements as to whether Form No. 29 was prepared at the spot, and that when the case property was produced before the Station House Officer Hardip Kumar, whether the formalities

were completed in his presence.

The Courts exist to do justice between the parties, which is not to be regulated by the technicalities of law. The said witness was present in the Court and immediately after his cross-examination, the request for re-examination was made by the learned Additional Public Prosecutor for the State. It is to be noticed that if a witness makes a statement in examination-in-chief and makes contradictory statement in cross-examination, he is liable for perjury, as either of his statement is false. Probably, the prosecution wanted to get the clarification from the witness as to which part of his statement is correct i.e. whether the statement made in examination-in-chief is correct or whether the statement made in cross-examination is correct ? There is nothing illegal in the same. This is a procedural matter, in which the High Court should not interfere. It is further to be noted that in this case, no application under Section 311 Cr.P.C. was filed and immediately after cross-examination of the said witness, the request was made by the learned Additional Public Prosecutor for the State.

Learned counsel for the petitioner has relied upon the authority of this Court in Jaswant Rai Versus State of Punjab, 2013 (1) RCR (Criminal) 256. A perusal of the said authority shows that it pertained to filing of a formal application under Section 311 Cr.P.C. by the prosecution. It was observed by a coordinate Bench of this Court that the witness was cross-examined by the defence counsel

and the Public Prosecutor for the State had not sought the permission for re-examination of the witness. However, it is not so in the present case. Similarly, in another authority of the Hon'ble Supreme Court in Hanuman Ram Versus The State of Rajasthan and others, 2008 (4) RCR (Criminal) 823, is not attracted in the present case as in the said case, formal application under Section 311 Cr.P.C. was moved by the accused. It being so, I do not find any illegality or infirmity in the impugned order dated 6.2.2015, passed by the learned Judge, Special Court, SBS Nagar. The same is accordingly upheld.

Accordingly, the present petition is dismissed.

(KULDIP SINGH)
JUDGE

18.2.2015
sjks