

**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

**Crl. Revision No.1291 of 2015
Date of decision : 07.05.2015**

Kuldeep Rai

.....Petitioner

versus

State of Punjab

...Respondent

CORAM: HON'BLE MS. JUSTICE ANITA CHAUDHRY

Present: Mr. B.S. Baath, Advocate
for the petitioner.

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ANITA CHAUDHRY, J.

This revision is directed against the order dated 31.03.2015, passed by the Additional Sessions Judge, Fatehgarh Sahib who dismissed the application filed by the accused who was seeking recall of the Investigating Officer for further cross-examination.

On last date of hearing, the petitioner was directed to file the statements recorded under Section 161 Cr.P.C. and the statements recorded during trial. Counsel for the petitioner submits that his papers were ready but there was some objection, therefore, the Registry did not accept the same. Copy of said statements has been filed in the Court and are taken on record.

Learned counsel for the petitioner contends that an application has been filed by the accused for recall of the Investigating Officer as the statements recorded under Section 161 Cr.P.C. were to be put to the Investigating Officer as contradiction had crept in the statement that was made to the police and those made in the Court. He urges that before the police, the statements given by Deep Singh and Harnek was that the petitioner was holding a stick whereas in the Court the witnesses have changed the statement and have stated that the petitioner was holding a rod and they had made improvements. He urges that the prosecution failed to examine these two witnesses and both of them were given up and they were not aware that these two witnesses would be given up later and they may be allowed one opportunity to cross-examine the Investigating Officer and confront him with this material. Reliance was placed upon ***Mannan Sk. and others Vs. State of West Bengal and another 2014(2) RCR644 (SC)***.

The application filed under Section 311 Cr.P.C. (Annexure P-1) reads as under:-

"That the prosecution examined Balwinder Singh PW as PW-5 on 15.05.2014 and cross-examination of this PW was conducted but at that time some documents which are very much relevant with the case were not available with the defence counsel. Due to which the cross-examination of this PW remained incomplete.

That the further cross-examination of this PW is very much necessary for just disposal of this case and without which the ends of justice shall be defeated.

It is therefore prayed that Balwinder Singh PW may kindly be called to face further cross-examination and applicants undertake to furnish the cross-examination in one opportunity. Hence, application may kindly be allowed in the interest of justice."

The trial Court in its order dated 31.03.2015 traced the proceedings and the adjournment sought on behalf of the defence and noted that the prosecution evidence has been closed on 24.02.2015 and statement of the accused had been recorded on 03.03.2015 and the case was adjourned on 11.03.2015 for defence evidence and it had been adjourned three times when the application for summoning witnesses in defence was filed. It noted that on the adjourned hearing, instead of leading evidence the application for recall of the Investigating Officer was filed. The concluding paragraph of the order passed by the trial Court reads as under:-

“The rival stands taken by the accused for the purpose of filing of the said application as well as taken in the written reply filed by the prosecution to contest the same, go to reveal that PW-5 SI Balwinder Singh was cross examined at length going into five pages on 15.05.2014 by learned counsel for accused. The counsel for the accused has not detailed the documents sought to be put to PW-5 SI Balwinder Singh examined by prosecution. Moreover, the prosecution had already closed its evidence and the statements of the accused have been recorded on 3.3.2015 and the accused thereafter, have availed about five effective opportunities to lead defence but have not examined even a single witness in their defence and have filed the present application only to linger on the disposal of the case and resulting of which, the application filed by the accused for recalling PW-5 SI Balwinder Singh, without any such substance, is not found to be sustainable from any angle and as per circumstances of the case and cross examination already conducted to the said witness by the accused and resulting of which the application filed by the accused to the said effect is, therefore, dismissed. Now the case is adjourned to 4.4.2015 for defence evidence if any of the accused, failing with for arguments.”

The defence had moved an application for recall of the Investigating Officer but failed to disclose in their application as to which document was to be put to the Investigating Officer. In order to succeed in his prayer the petitioner was to show some illegality in the impugned order. In this revision, the entire complexion has been changed and a new plea has been presented which was not before the trial Court. The application that was filed before the trial Court was vague. The applicant did not specify the document which was to be put to Investigating Officer either in the application or during the course of arguments. Therefore, I find no infirmity in the same. The petitioner has tried to project totally different case before this Court. I see no infirmity in the impugned order.

The petition is dismissed.

07.05.2015
sunil

(ANITA CHAUDHRY)
JUDGE