

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

(212)

CRR-4078-2015

Decided on: December 05, 2015.

Lakhwinder Singh @ Sukha

.... Petitioners

Versus

State of Punjab

..... Respondent

CORAM: HON'BLE MR. JUSTICE M.M.S. BEDI

Present: Mr. S.S. Gill, Advocate, for the petitioners.

Mr. Jashan Preet Singh, AAG, Punjab.

M.M.S. BEDI, J (ORAL)

This is a petition filed by the accused-petitioner against the order dated 03.10.2015 passed by the learned trial Court. Vide impugned order, an application under Section 311 Cr.P.C filed by the petitioner to summon PW-1 ASI Gurjant Singh for further cross-examination, has been dismissed on the ground that the petitioner has not been cooperating with the Court and the dismissal of the application would serve the purpose of expeditious trial.

I have considered the facts and circumstances of the case.

After recording statement of ASI Gurjant Singh, his cross-examination was ordered to be recorded as 'NIL' on 25.05.2015 when the counsel for the accused-petitioner was stated to be not well. Justice is paramount consideration while deciding application under Section 311 Cr.P.C. When a prosecution witness has not been permitted to be cross-examined on account of fault of the counsel, the cross-examination of said witness by re-summoning would be necessary in case an application for

seeking to cross-examine the witness is filed. The petitioner cannot be penalized for the act of the Advocate who could not appear for completion of the cross-examination.

Petition is allowed. Order dated 03.10.2015 dismissing application under Section 311 Cr.P.C is set aside. It is observed that the trial Court shall re-summon witness ASI Gurjant Singh to enable the petitioner to cross-examine him. It is made clear that on the date fixed for the cross-examination in case the petitioner's counsel fails to cross-examine him, this petition will be deemed to have been dismissed.

(M.M.S. BEDI)
JUDGE

December 05, 2015
harsha