

In the High Court of Punjab and Haryana at Chandigarh

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Criminal Misc. No.M-12024 of 2014

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Date of decision:13.1.2016

Ravinder Kumar alias Ravi

...Petitioner

v.

State of Haryana

...Respondent

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**Coram: Hon'ble Mr. Justice Inderjit Singh**

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Present: Mr. Satikshan Sharma, Advocate for Mr. Brijender Kaushik,  
Advocate for the petitioner.

Mr. P.K. Jhanda, Assistant Advocate General, Haryana  
for the respondent-State.

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**Inderjit Singh, J.**

This petition has been filed under Section 482 Cr.P.C. read with Article 227 of the Constitution of India for quashing of the order dated 15.1.2014 (Annexure-P.6) and order dated 3.3.2014 (Annexure-P.7), whereby the application of the petitioner for recalling of witnesses has been wrongly and illegally rejected.

Notice of motion was issued in this case.

Mr. P.K. Jhanda, learned Assistant Advocate General, Haryana has put in appearance and contested this petition. Reply has also been filed.

I have heard learned counsel for the petitioner and learned

Assistant Advocate General, Haryana and have gone through the record.

From the record, I find that an application was filed by the accused under Section 311 Cr.P.C. for recalling the witnesses i.e. PW-1 Madan Lal and PW-2 Bansi Lal in which it has been stated that the said two witnesses could not be cross-examined by the defence counsel as he was out of station due to his some personal work. It has been submitted that both the said witnesses are very material and they are necessary to be cross-examined.

Learned Chief Judicial Magistrate, Ambala vide order dated 15.1.2014 dismissed the application by stating that the case of the accused pertains to the year 2008 and is one of the oldest cases and is fixed for defence evidence. If the application is allowed it would cause further delay in the disposal of the present case. It has also been stated in the order that the witnesses have been examined on 9.4.2010 and no appeal/revision has been filed against that order and this application has been filed after 3½ years of said order. A perusal of the record further shows that the statements of PW-1 and PW-2 are Annexures-P.1 and P.2. It is stated in both the statements that “now at 2.30 p.m. Cross by accused. XXXX Nil opportunity given”, which means that at 2.30 p.m. the accused was asked to cross-examine the witnesses, but there is no cross-examination. This is a FIR case for the offences under Sections 323, 452 and 506 IPC. PW-1 Madan Lal and PW-2 Bansi Lal have deposed regarding the occurrence being eye witnesses and they have identified the accused. If no opportunity is given to the accused to cross-examine the witnesses, the statements of the material witnesses will remain unchallenged and the present petitioner/ accused will

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suffer. It is settled law that if the application is filed late it is no ground to dismiss the same. Even if it is stated that it is filed to fill-up the lacuna, even then it is no ground to dismiss the application. The mere fact that the case is of the year 2008 or it is fixed for defence evidence is also no ground to dismiss the application. The cross-examination of PW-1 and PW-2 is necessary for the just decision of the case and to secure the ends of justice.

Therefore, keeping in view the above discussion, I find merit in this petition and the same is allowed. However, whenever the presence of PW-1 and PW-2 is procured by the Court and the witnesses appear in the Court, the present petitioner is to cross-examine these witnesses as the present petitioner will have only one opportunity to cross-examine PW-1 and PW-2. It is made clear that no adjournment for cross-examination will be given to the accused/petitioner on any ground.

With these observations, the present petition is allowed.

January 13, 2016.

**(Inderjit Singh)**  
**Judge**

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