128 IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-36529-2016
Date of decision-17.10.2016

Boota Ram and another **...Petitioners**

Vs.

State of Punjab **...Respondent**

CORAM:- HON'BLE MR. JUSTICE JITENDRA CHAUHAN

Present: Mr. T.P.Singh, Advocate for the petitioners.

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JITENDRA CHAUHAN, J. (Oral)

This petition under Section 482 of the Criminal Procedure Code has been filed for setting aside the order dated 29.07.2016 (Annexure P-3) passed by learned Additional Sessions Judge, SBS Nagar vide which application under Section 311 Cr.P.C. filed by the petitioners for re-calling PW-3 ASI Avtar Singh, PW-4 HC Major Ram and PW-5 Inspector Raj Kapoor for further cross examination, has been dismissed.

Learned counsel for the petitioners contends that the petitioners being illiterate and rustic villagers could not disclose their entire evidence to their counsel. Therefore, PW-3 ASI Avtar Singh, PW-4 HC Major Ram and PW-5 Inspector Raj Kapoor, who are material witnesses, could not be properly cross-examined, which has caused grave prejudice to their case. Some very important questions could not be put to the said prosecution witnesses. This fact came to the notice of the petitioners when he changed his counsel and it transpired that the aforesaid prosecution witnesses were not even confronted with lacunae and material portion of the prosecution evidence.

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I have heard learned counsel for the petitioners and perused the case file.

It is evident from the record that the accused-petitioners were being represented throughout by their counsel which was engaged by them out of their own choice. Sufficient opportunity was given to them to cross examine the witnesses examined by the prosecution and they were even cross-examined by their counsel. Only the change of counsel cannot be said to be a sufficient reason for recalling the witnesses. The trial is at the fag end as the matter is at the stage of recording defence evidence. It is settled position of law that any person can be summoned as witness or recalled for cross-examination and re-examined at any stage of proceedings where essential. However, in the instant case, this Court feels that learned Court below has passed a reasoned order while dismissing the application of the accused-petitioners under Section 311 Cr.P.C., and therefore, no interference is called for.

Dismissed, *in limine*.

(JITENDRA CHAUHAN)
JUDGE

October 17, 2016
vanita

Whether speaking/reasoned : Yes No
Whether Reportable : Yes No

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