

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

CRM-M-46150-2016

Date of decision: 23.12.2016

Inderjit Singh

...Petitioner

Versus

State of Punjab and another

...Respondents

CORAM: HON'BLE MRS.JUSTICE SNEH PRASHAR

Present: Mr.AS Bhatti, Advocate for the petitioner

SNEH PRASHAR, J.

The present petition under Section 482 of the Code of Criminal Procedure (for short 'Cr.P.C.') has been filed for quashing of order dated 22.8.2016 passed by learned Sub Divisional Judicial Magistrate, Dasuya vide which the application under Section 311 Cr.P.C. filed for grant of one opportunity to cross-examine the prosecution witnesses, which were not cross-examined, was dismissed.

Notice of motion.

On asking of the Court, Mr.Ankur Jain, Assistant Advocate General, Punjab accepts notice on behalf of the respondent-State.

It is submitted by learned counsel for the petitioner that during trial of the case, due to negligence of the counsel, the petitioner could not cross-examine PW1 Sukhvir Singh, PW2 Raj Kumari, PW4 ASI Bhupinder Singh and PW5 HC Gurmit Singh. The said witnesses are very material being the complainant, eyewitness and investigation officer and their cross-examination is necessary for just and proper decision of the case. In case their deposition remains uncrossexamined,

the defence of the petitioner will be shattered whereas their resummoning will not cause prejudice to the case of the prosecution.

Section 311 Cr.P.C. confers wide powers on the Court to summon any person as a witness or to recall and re-examine any person already examined at any stage of any inquiry, trial or other proceeding. The said provision further casts a duty upon the Court to summon and examine or recall and re-examine any such person, if his evidence appears to be essential for the just decision of the case. On account of the fault of the counsel, the litigant should not be left to suffer.

In Vikas Suresh Rao Waghmare vs. Moreshwar Bhuausaheb Kadam 2011(2) Recent Criminal Reports (Criminal) 632 i.e. a case under Section 138 Cr.P.C., recalling of the complainant for cross-examination was allowed since some vital questions in respect of certain documents could not be put to him during his cross-examination.

For testing the creditability of a witness and for extracting the truth, his cross-examination is necessary. When a witness is not cross-examined at all or is not cross-examined on a particular fact deposed by him, it almost amounts an admission of the statement to that effect made by him.

In the instant case, as submitted by learned counsel for the petitioner, all material witnesses of the prosecution have been allowed to go without cross-examination by counsel for the petitioner. In case an opportunity is not given to the petitioner to cross-examine the said witnesses, he will certainly undoubtedly suffer an irreparable prejudice

to his defence.

In view of the above, the present petition is allowed and the order dated 22.8.2016 passed by learned Sub Divisional Judicial Magistrate, Dasuya is set aside. The trial Court is directed to grant one effective opportunity to the petitioner to cross-examine PW1 Sukhvir Singh, PW2 Raj Kumari, PW4 ASI Bhupinder Singh and PW5 HC Gurmit Singh subject to deposit of Rs.3000/- as costs by the petitioner with the District Legal Services Authority, Hoshiarpur.

23.12.2016
gsv

(SNEH PRASHAR)
JUDGE

Whether speaking / reasoned?
Whether reportable?

Yes / No
Yes / No