

264.

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

CRM-M-5851-2016

Date of decision:03.08.2016

Rishipal Singh

... Petitioner

versus

State of Haryana and another

.... Respondents

CORAM: HON'BLE MR. JUSTICE HARI PAL VERMA

Present: Mr.Tejinder Pal Singh, Advocate,
for the petitioner.

Mr. Manish Bansal, DAG, Haryana.

HARI PAL VERMA, J.(Oral)

Petitioner-Rishipal Singh son of Shri Anant Ram, resident of Village Dinger Majra, Police Station Gharaunda, District Karnal, has filed the present petition under Section 482 Cr.P.C. for setting aside order dated 12.01.2016 (Annexure P-6) vide which the application under Section 311 Cr.P.C. read with Section 217 filed on behalf of the petitioner and other co-accused for recalling of S.I. Naresh Chand for further cross-examination after framing of fresh charge was dismissed by the learned trial Court.

Learned counsel for the petitioner contends that vide order dated 08.07.2015, additional charge against the petitioner and other co-accused was framed. S.I. Naresh Chand had earlier appeared as PW-4 and was examined on 07.06.2014. Therefore, once additional charge has been framed, it is legal right of the petitioner to cross-examine the said witness. Accordingly, the petitioner has moved the application under Section 311

Cr.P.C. for recalling S.I. Naresh Chand for further cross-examination, but

the trial Court vide order dated 12.01.2016 has declined the said prayer. Learned counsel further states that the provisions of Section 311 Cr.P.C. are to be interpreted in a liberal sense and the petitioner being an accused has a right to cross-examine said S.I. Naresh Chand particularly when additional charge has been framed.

On the other hand, learned State counsel states that PW4- Naresh Chand has already been examined and, therefore, he is not to be cross-examined even if the additional charge has been framed. The additional charge does not change the nature of charges.

I have heard learned counsel for the parties.

The provisions of Section 311 Cr.P.C. read as under:-

“Power to summon material witness, or examine person present. Any Court may, at any stage of any inquiry, trial or other proceeding under this Code, summon any person as a witness, or examine any person in attendance, though not summoned as a witness, or recall and re-examine any person already examined; and the Court shall summon and examine or recall and re-examine any such person if his evidence appears to it to be essential to the just decision of the case.”

As per the above provision, Court is empowered to summon a material witness or examine a person present.

In the case in hand, the trial Court has framed additional charge on 08.07.2015 against the petitioner and other co-accused. Therefore, the petitioner has a right to cross-examine S.I. Naresh Chand, who had earlier appeared as PW-4 and was examined on 07.06.2014. The said witness was cross-examined on the basis of earlier framed charge and not on amended charge. Therefore, this Court finds that the petitioner is entitled to cross-examine S.I. Naresh Chand.

Accordingly, the present petition is allowed and the order dated

aside. The petitioner is given one more opportunity to cross-examine S.I. Naresh Chand and the trial Court is directed to consider the same in accordance with law.

(HARI PAL VERMA)
JUDGE

03.08.2016
sanjeev

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