

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

**CRM-M-11562 of 2017
Date of decision : 21.7.2017**

Karnail SinghPetitioner

v.

State of PunjabRespondent

CORAM: HON'BLE MR. JUSTICE SHEKHER DHAWAN

Present: Mr. Surinder Sharma, Advocate, for the petitioner

Mr. Rahul Rathore, DAG, Punjab

SHEKHER DHAWAN, J.

1. The present petition is to challenge the order dated 19.1.2017, whereby two witnesses namely; Amarjit Singh and Harkamaljit Singh were present in Court and the learned trial Court has passed the following order :

“PW1 Amarjit Singh and PW2 Harkamaljit Singh are present and cross examined. Let summons to unexamined PWs be issued for 1.4.2017.”

2. Learned counsel for the petitioner contended that on 19.1.2017 in the before lunch session, the Court recorded examination-in-chief of PW1 Amarjit Singh and thereafter, the proceedings were adjourned for after lunch session. The same is evident from copy of statement placed on file, which was recorded on 19.1.2017 wherein, the Court observed that cross examination deferred till lunch break. He further contended that in the after lunch session, the counsel was busy in some other Court and the learned trial Court proceeded

with the cross examination of PW1 Amarjit Singh and examination of PW2 Harkamaljit Singh and no opportunity was given to the petitioner to cross examine both these witnesses, who are material witnesses and the case is still at the stage of prosecution evidence, so, he may be allowed to cross examine both the witnesses.

3. Learned State counsel contended that the petitioners counsel was present in the Court before lunch session and he was supposed to remain present in the after lunch session and there is no justification for recalling the witnesses for the same purpose and the present petition be dismissed.

4. I have considered the fact and gone through the order passed by the learned trial Court and statements recorded on 19.1.2017. This Court is of the considered view that on 19.1.2017, statements of PW1 Amarjit Singh was recorded in before lunch session and thereafter, the same was posted for after lunch session. In after lunch session, statements of PW1 Amarjit Singh and PW2 Harkamaljit Singh were completed and in the cross examination it was recorded "opportunity given". Both these witnesses are material witnesses and the case is at the stage of prosecution evidence only. Though, learned counsel for the petitioner was little negligent by not attending the Court in after lunch session but if these witnesses remained un-examined, that will cause material injustice to the parties and even the other party can be well compensated by payment of costs.

5. In view of above, the present petition is allowed. Order dated 19.1.2017 (Annexure P-3) is set aside. The learned trial Judge is directed to recall above named two witnesses and to complete their cross examination. The petitioner shall pay ₹ 1000/- to each witness for attending the Court

proceedings again, on the date of their cross examination. Only one opportunity shall be given for the purpose of cross examination of these two witnesses.

(SHEKHER DHAWAN)
JUDGE

21.7.2017
Ashwani

Speaking/reasoned : Yes/No
Reportable : Yes/No