

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

CRM No.M-15574 of 2015 (O&M)

Date of Decision: August 31, 2017

Amritbir Singh

...Petitioner

VERSUS

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Preetinder Singh Ahluwalia, Advocate
for the petitioner.

Mr.Gaurav Garg Dhuriwala, Sr.DAG, Punjab
for the respondent-State.

INDERJIT SINGH, J.

Petitioner has filed this petition under Section 482 Cr.P.C. against respondent State of Punjab for quashing the order dated 05.05.2015 passed by learned Sessions Judge, Patiala, vide which the application under Section 311 Cr.P.C. filed by the prosecution was allowed.

Notice of motion was issued. Learned State counsel appeared on behalf of the respondent-State.

I have heard learned counsel for the petitioner as well as learned State counsel and have gone through the record.

From the record, I find that during the pendency of the trial, an application was filed by the Public Prosecutor under Section 311 Cr.P.C. for recalling PW Sadik Ansari, Diver. It is stated in the application that witness

was examined on 03.11.2014 but his further statement was deferred due to non-production of case property i.e. .32 bore revolver, live cartridges and live cartridges of .12 bore gun. He was further examined on 4.2.2015 when regular Public Prosecutor was on duty conducting a special case at Mohali, as such, Additional Public Prosecutor had conducted the trial. However, inadvertently, the case property which was actually recovered by the witness, could not be put to the witness at the time of evidence though such case property was available in the Court having been produced at the time of examination of Investigating Officer. In order to clarify the controversy and in the interest of justice, the case property is required to be put to the witness since case relates to four murders in a family.

Learned counsel for the petitioner has placed reliance upon the statement of witness examined in the Court, copy of which is also placed on record. The perusal of the statement of witness Sadik Ansari shows that case property was put to him and he had given reply also. As the case property has already been put to the witness, therefore, there is no need to again confront the witness with the case property.

The statement of PW-19 Sadik Ansari recorded in the Court, shows that the sealed parcels were opened and the witness stated that these are the same live cartridges Ex.MO-1 to Ex.MO-5 and empty shells Ex.MO-6 to Ex.MO-15, which had been recovered by him and other divers of his team. He has also seen eight live cartridges of .12 bore and stated that these are the same live cartridges which had been recovered by him and other divers from Mehas Canal and same are Ex.MO-16 to Ex.MO-23.

As regarding the revolver, on opening of the sealed parcel in

witness but the witness stated that he does not recollect as to whether it is the same revolver which had been recovered from the Mehas Canal by him and his colleagues. This statement of witness Sadik Ansari shows that case property has already been put to the witness and there is no need to recall the witness again for the same purpose, as it will amount to filling up of lacunae etc.

In view of the above discussion, I find that the order dated 05.05.2015 has been passed by learned Sessions Judge, Patiala without discussing this aspect that case property has already been put to the witness and allowed the application, which is not as per the evidence on record and law.

Therefore, finding merit in the present petition, the same is allowed. The impugned order dated 05.05.2015 passed by learned Sessions Judge, Patiala, is set aside.

August 31, 2017
Vgulati

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No