

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

CRM No.M-24007 of 2017 (O&M)

Date of Decision: July 10, 2017

Raj Kumar @ Raju

...Petitioner

VERSUS

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.R.D.Sharma, Advocate
for the petitioner.

INDERJIT SINGH, J.

Petitioner has filed this petition under Section 482 Cr.P.C. against respondent State of Punjab for quashing the order dated 01.06.2017 passed by learned JMIC, Pathankot, whereby the application dated 18.05.2017 under Section 311 Cr.P.C. filed by the respondent-State was allowed.

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

From the record, I find that during the trial, an application was filed by learned APP for summoning witnesses Seema Devi and Ankush Shukla under Section 311 Cr.P.C. by stating that on 20.03.2017, evidence of Ankush Shukla, who is complainant in the present case, was recorded but main contradictions were seen in the cross-examination as he did not

identify the accused who was driving the car. It is also averred that Seema

Devi refused to identify the accused. It is stated in the application that these witnesses are to be re-examined. Reply was filed. Learned JMJC, Pathankot, allowed the application.

Section 138 of the Indian Evidence Act, 1872 provides as under:-

***“138. Order of examinations.—**Witnesses shall be first examined-in-chief, then (if the adverse party so desires) cross-examined, then (if the party calling him so desires) re-examined. The examination and cross-examination must relate to relevant facts, but the cross-examination need not be confined to the facts to which the witness testified on his examination-in-chief. Direction of re-examination.—The re-examination shall be directed to the explanation of matters referred to in cross-examination; and, if new matter is, by permission of the Court, introduced in re-examination, the adverse party may further cross-examine upon that matter.”*

From the perusal of the above provision, it is clear that the prosecution has right to re-examine the witnesses. Only new matter can be introduced with the permission of the Court and if it is done so, then the accused has right to cross-examine the witnesses. As per above provision under Section 138 of the Indian Evidence Act, re-examination shall be directed to the explanation of the matters referred to in cross-examination. The prosecution has stated that witnesses have not identified the driver and have given some contradictory statements, so re-examination can be allowed.

Furthermore, at the time of arguments, learned counsel for the petitioner admitted that on the day, when the witnesses were cross-examined, an application was filed for re-examination, which was later on withdrawn and on the same day, present application was filed. The prosecution has asked for their right for re-examining at the same moment

and there is no unnecessary delay. The perusal of the impugned order shows that order is correct, as per law and no illegality has been committed. In no way, the passing of the impugned order dated 01.06.2017 can be held as abuse of process of law or amounting to miscarriage of justice.

Therefore, finding no merit in the present petition, the same is dismissed.

July 10, 2017
Vgulati

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No