

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

CRM No.M-29741 of 2016 (O&M)

Date of Decision: October 24, 2017

Karamjit Singh alias Karma

...Petitioner

VERSUS

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Joginder Pal Rattrra, Advocate
for the petitioner.

Mr.K.S.Aulakh, Deputy Advocate General, 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 setting aside the order dated 18.01.2016 passed by learned Judge, Special Court, Patiala, in case FIR No.99 dated 12.07.2014 under Section 22 of the NDPS Act registered at Police Station Kotwali, Nabha.

Notice of motion was issued. Learned State counsel appeared and contested the petition.

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, when PW-7 Harphool Singh appeared before the Court as witness and his

chief examination was recorded, counsel for the accused did not appear and the Court passed the order treating the cross-examination as nil. The accused filed application under Section 311 Cr.P.C. for summoning PW-3 Karamjit Singh by stating that some material questions have been left to be put to this witness and also to summon PW-7 Harphool Singh for cross-examination as due to miscommunication between father of the accused and counsel, the accused's counsel could not appear in the Court to cross-examine the witness.

Learned Judge, Special Court, Patiala, vide impugned order dated 18.01.2016, dismissed the application. Aggrieved from the impugned order dated 18.01.2016, present petition has been filed.

First of all, I find that qua recalling of witness PW-3 Karamjit Singh, the impugned order passed by learned trial Court is correct. This witness has already been produced before the Court and only ground given for recalling is that some material questions have been left but there is no specific averment that on which material facts, the witness could not be cross-examined. Therefore, on the vague averments, PW-3 cannot be recalled and the application qua recalling of PW-3 has been rightly dismissed.

As regarding PW-7 Harphool Singh, he is material witness and if he was not cross-examined and the application is not allowed for cross-examination of PW-7, then it will cause prejudice to the accused and his statement will be treated as unchallenged and the accused will suffer loss.

To do substantial justice between the parties and to decide the matter substantially after giving opportunity of being heard and in the interest of justice, I find merit in the application under Section 311 Cr.P.C.

qua summoning of PW-7 Harphool Singh for cross-examination. Therefore, application under Section 311 Cr.P.C. filed by the petitioner is allowed to the extent that PW-7 Harphool Singh be re-called for cross-examination. Learned trial Court is directed to record the cross-examination of PW-7 Harphool Singh as per law.

Resultantly, present petition stands partly allowed accordingly.

October 24, 2017
Vgulati

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No