

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

CRM-M-29316 of 2017

Date of Decision: August 10, 2017

Satpal and another

.....Petitioners

Versus

State of Haryana

.....Respondent

CORAM:HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: Mr. Harish Bhardwaj, Advocate
for the petitioners.

ARVIND SINGH SANGWAN, J.

Petitioners have filed this petition challenging order dated 7.7.2017 (Annexure P5), whereby application moved by the petitioners for further cross-examination of PW Richpal, under Section 311 of the Code of Criminal Procedure, 1973 ('Cr.P.C.' for short) was dismissed.

It is submitted on behalf of the petitioners-accused-Satpal and Mahipal that on 2.2.2016, statement of PW2 Richpal was recorded and their counsel could not effectively cross-examine this witness as their counsel was not allowed to go through the contents of the

examination-in-chief of PW2 Richpal. It is further submitted that the petitioners have moved an application under Section 311 Cr.P.C. on 26.10.2016 for summoning the aforesaid Richpal, son of Neki Ram for his re-cross-examination.

Respondent-State filed reply to the application and contested the same that PW2 Richpal was cross-examined at length by the learned defence counsel and sufficient opportunity was granted to cross-examine this witness and as the accused persons have won over this witness and, therefore, prayed for dismissal of the same.

Learned trial Court, vide impugned order dated 7.7.2017, dismissed the application and, therefore, the present petition has been filed.

Learned counsel for the petitioners has submitted that further cross-examination of PW2 Richpal is necessary as certain questions could not be put to him.

After hearing learned counsel for the petitioner, I find no force in the instant petition and same deserves dismissal.

Section 311 Cr.P.C reads 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.”

Thus, as per the above provision, the Court at any time may recall a witness for further examination, if his evidence appears to be essential for the just decision of the case.

Application for recalling PW2 Richpal has been filed on the ground that the examination-in-chief of this witness was already recorded before defence counsel reached the Court and, therefore, he was not allowed sufficient opportunity to cross-examine witness. The trial Court has recorded a finding that, at the time of recording the statement of PW2 Richpal, both at the time of recording examination-in-chief as well as cross-examination, S/Shri B.K.Tyagi, Suresh Malik, Vikas Kundu and R.S.Dahiya, Advocates were present. All these Advocates were representing different sets of accused persons and had cross-examined this witness. Counsel for the petitioners- Mr.Sandeep Sharma was also present and he had also cross-examined this witness. The cross-examination of this witness was done at length and it run into more than three pages. Counsel for the petitioners has failed to show that on 2.2.2016, counsel for the petitioner was not present when the statement of PW2 Richpal was recorded. Moreover, on that date, nothing was pointed out before the trial Court in this regard. It is apparent that the present application has been filed after about 8 months i.e. on 26.10.2016 which itself shows that in case proper cross-examination of PW2 was not recorded on 2.2.2106, learned defence counsel would have immediately filed an application for recalling of witness.

After hearing learned counsel for the petitioner and going through the record of the case, I am of the considered opinion that the trial Court had rightly dismissed the application moved by the petitioner for recalling PW2 Richpal for further cross-examination.

No ground for interference by this Court is made out.

Dismissed.

(ARVIND SINGH SANGWAN)
JUDGE

August 10, 2017
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Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No