

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

**CRM No.M-35993 of 2015
Decided on: 30.01.2017**

Paramjit Kaur

....Petitioner

Versus

State of Punjab and others

....Respondents

CORAM: HON'BLE MRS JUSTICE REKHA MITTAL

Present : Mr. Ashish Aggarwal, Advocate for the petitioner.

Mr. Navdeep Singh, DAG, Punjab.

Mr. Navjit Sodhi, Advocate
for respondents No.2 to 5.

REKHA MITTAL, J. (Oral)

The present petition directs challenge against order dated 12.10.2015 (Annexure P3) passed by the Additional Chief Judicial Magistrate, Gurdaspur whereby application filed under Section 311 of the Code of Criminal Procedure (in short 'Cr.P.C.') for cross-examination of ASI Bachan Singh (Investigating Officer) has been dismissed.

Counsel for the petitioner has submitted that FIR No.176 dated 17.11.2008 for offence punishable under Sections 498-A, 406 and 494 of the Indian Penal Code (in short 'IPC') was registered at Police Station Sadar Gurdaspur, District Gurdaspur, at the behest of the petitioner. Charge was framed in the year 2014 and evidence of the prosecution has been closed by order of the Court. It is further submitted that a serious prejudice would be caused in case the prosecution is not permitted to examine ASI Bachan Singh (Investigating Officer) who conducted investigation, recorded

statements of the witnesses and prepared seizure memos, etc. It is prayed that one opportunity may be allowed to the prosecution to ensure presence of ASI Bachan Singh before the trial Court for his examination as a witness.

Counsel for the accused (contesting respondents) has submitted that as the prosecution failed to examine ASI Bachan Singh despite numerous opportunities including last opportunity granted for the purpose, there is no justification to reopen the case at the cost of delaying the proceedings resulting in harassment to the respondents/accused.

I have heard counsel for the parties and perused the paperbook particularly the order impugned passed by the trial Magistrate.

The trial Court in the concluding para of the impugned order has accepted plea of the prosecution that ASI Bachan Singh is a material witness in the case but refused to allow the application on the premise that the prosecution has availed numerous opportunities including last opportunity and the proceedings are pending for recording statement of accused persons under Section 313 Cr.P.C. Counsel for the respondents has not disputed findings of the trial Court that ASI Bachan Singh is a material witness in the case. Failure of the trial Court to examine the said witness at any appropriate stage or even by accepting the prayer under Section 311 Cr.P.C. has resulted in delay of the proceedings for another more than one year. As examination of ASI Bachan Singh is material for just decision of the case, it would be in the fitness of interest of justice that one opportunity is allowed to the

prosecution to examine ASI Bachan Singh on the date already fixed before the trial Court. The prosecution and the Court shall put its best efforts to ensure presence of ASI Bachan Singh (since retired as informed by counsel representing the State) on the date fixed so that there is no further delay in conclusion of trial.

30.01.2017
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(REKHA MITTAL)
JUDGE

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| 1. | Whether speaking/reasoned | Yes/No |
| 2. | Whether reportable: | Yes/No |