

IN THE HIGH COURT OF PUNJAB AND HARYANA,
AT CHANDIGARH

CRM-M-40738-2016

Date of Decision: 10.01.2017

Harbhajan Kaur

.....Petitioner

Vs.

State of Punjab and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

Present: Ms. Rakhi Sharma, Advocate,
for the petitioner.

Mr. Gurinderjit Singh, D.A.G., Punjab,
for respondent no. 1-State.

Mr. Gagandeep Singh, Advocate,
for respondents no. 2 to 6.

AMOL RATTAN SINGH, J. (ORAL)

By this petition, the order of the learned trial Court dismissing the application of the present petitioner (complainant) to summon one more witness, i.e. her son, stated to be the owner of one of the stolen articles involved in the case, (a motor-cycle, bearing registration No. PB-02-BG-7499), has been dismissed.

2. The reasoning given by the learned trial Court, firstly, is that the complainant has no *locus standi* to file the application. Other than that, it has been stated that the complainant was represented by her counsel through out the trial, including when the prosecution evidence was closed on 26.09.2016. Hence, the order further states, that the application was only an attempt to delay the outcome of the trial.

Whereas the second part of the reasoning of the trial Court is not

wholly without reason, in view of the fact that the trial is stated to have continued for three years, with the petitioner-complainant duly represented by her counsel and the application was moved only after the prosecution evidence had been closed, however, it obviously having been moved immediately after such closure, the application also having been decided within one month thereafter, at least there is not seen to be any delay in filing the application after prosecution evidence was closed.

4. As regards the first part of the reasoning in the impugned order, on the *locus* of the complainant, learned counsel for the petitioner has relied upon a judgment of the hon'ble Supreme Court in **Sister Mina Lalita Baruwa vs. State of Orissa and others** (2013) 16 SCC 173, to submit that the powers conferred under Section 311 of the Cr.P.C. are wide enough for the Court itself to take notice of the fact that a necessary witness had not been examined, and to call for such witness.

In that case also, the complainant herself had filed an application under Section 311 Cr.P.C., with the trial Court in that case having rejected it on the ground of maintainability.

Hence, the contention of learned counsel for the petitioner presently is that since the petitioner-complainants' son, Baljit Singh, was the owner of the motor-cycle alleged to have been stolen by respondents no. 2 to 6 herein, alongwith other articles, he was a necessary witness who was not called upon by the prosecution.

5. Learned counsel for respondents no. 2 to 6 submits that the petitioner not having examined the aforesaid person when opportunity was duly available to her, the observation of the trial Court to the effect that it was only a delaying tactic, is not unfounded.

6. Having heard learned counsel, though I do not disagree with

what has been held by the learned trial Court and as submitted by the counsel for the respondents today, however, since only one opportunity to examine the aforesaid person is sought, in the interest of justice, it may be appropriate to allow the petitioner the said opportunity.

Learned counsel for respondents no. 2 to 6 further submits that if this Court is allowing such opportunity to the petitioner, then it should not be without payment of costs.

7. Hence, keeping in view the facts and circumstances, this petition is allowed and the impugned order of the learned trial Court dated 26.10.2016 is set aside. The petitioner is given one opportunity to examine the witness sought to be examined, i.e. her son Baljit Singh. Since the application was filed after evidence had been closed, the aforesaid opportunity shall be subject to payment of costs of Rs. 5,000/- by the petitioner herein.

8. It is made clear that nothing observed hereinabove, shall be taken to be any comment or any inference with regards to the merits of the case.

Consequently, the petitioner would produce the witness before the trial Court on the next date of hearing, i.e. 16.01.2017 and the trial Court shall thereafter, proceed with the trial.

(AMOL RATTAN SINGH)
JUDGE

January 10, 2017
nitin

Whether speaking/reasoned Yes

Whether Reportable Yes