

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

CRM-M-43223-2013

Date of decision:-15.11.2017

Surjit Singh and others

...Petitioners

Versus

State of Punjab

...Respondent

CORAM : HON'BLE MR. JUSTICE H.S. MADAAN

Present : Mr.Anil Chawla, Advocate
for the petitioner.

Ms.Samina Dhir, DAG, Punjab.

H.S. MADAAN, J.(ORAL)

By way of filing present petition under Section 482 Cr.P.C., petitioners – Surjit Singh, Malkiat Singh, Amrik Singh, Jagir Kaur and Rajwinder Kaur, who are accused in the cross case under Sections 307, 148, 149 IPC and 25 and 27 of Arms Act in FIR No.60 dated 7.6.2009, under Sections 307, 452, 447, 427, 148, 149 IPC and 25/27 of Arms Act, Police Station Sarhali, District Tarn Taran seeks setting aside of order dated 1.10.2013 vide which cross examination of two PWs i.e. PW2 Rajwinder Singh and PW3 Jaswinder Singh had been treated as NIL(Opportunity given) and also order dated 13.11.2013 vide which application for recalling PW2 and PW3 for cross-examination has been dismissed.

It is contended that when examination-in-chief of PW2 Rajwinder Singh and PW3 Jaswinder Singh was recorded on 1.10.2013,

the cross-examination was mentioned to be NIL(Opportunity given) and in the interim order, it is mentioned that Sh.Satnam Singh, Advocate has filed power of attorney on behalf of accused. Two PWs examined without making mention that how and under what circumstances the cross examination has been treated as NIL. Remaining PWs were ordered to be summoned for 21.10.2013. When an application under Section 311 Cr.P.C. was filed for recalling of Rajwinder Singh and Jaswinder Singh, the same was dismissed observing that counsel engaged by the accused had gone to Canada and had not returned by 1.10.2013. The accused had engaged Sh.Satnam Singh, Advocate, who had filed power of attorney in after lunch session and did not conduct the cross examination. The reason given was that he could not go through the record. The trial Court was influenced by the fact that counsel did not make request for deferring the cross-examination. It appears to be somewhat unusual and unconvincing. Accused facing trial for such offences and counsel appearing on their behalf would request that cross-examination of the crucial witnesses be treated as NIL does not appear to be convincing. The trial Court has dismissed the application without considering the aspect of the effect thereof upon the trial and the accused. A fair trial is right of every accused and cross-examination of witnesses especially, who are crucial witnesses should not be treated as NIL, in such like manner. The trial Court could have burdened the accused with cost for seeking an adjournment. Even now the petitioners are ready to pay the expenses to the witnesses or the cost whichever may be directed which is so noticed in the order dated 20.1.2014. Therefore, the impugned orders are not sustainable and are

set aside. Resultantly, the trial Court would summon PW2 Rajwinder Singh and PW3 Jaswinder Singh for a date to be fixed by it and then afford petitioners – accused an opportunity to cross-examine them. The cross-examination be completed on that date positively. Learned counsel for the petitioners has stated at bar that petitioners would not seek any adjournment for cross-examination of these witnesses. Let it be so done. The petitioners are burdened with costs of Rs.5,000/- as cost which be deposited in the trial Court. The trial Court may order payment of amount therefrom to the witness to bear their expenses and remaining amount, if any, may be deposited with the District Legal Services Authority in the free legal aid fund.

Petition stands allowed accordingly.

A copy of this order be sent to the trial Court immediately for strict compliance.

15.11.2017
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No