

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

**CRR No. 1854 of 2016 (O&M)
Date of decision: 19.04.2017**

Amrit Singh @ Amrit Pal Singh and others

...Petitioners

Versus

State of Punjab and another

...Respondents

CORAM:HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Achin Gupta, Advocate,
for the petitioners.

Mr. A.P.S. Gill, AAG, Punjab.

None for respondent No.2.

Ritu Bahri, J.

Challenge is to the order dated 18.02.2016 passed by the Additional Sessions Judge, Bathinda, whereby application filed by the prosecution under Section 311 Cr.P.C. for recalling/summoning of witnesses namely, Harbans Kaur, Kulwant Singh and Sukhpal Singh has been allowed.

Binder Kaur-complainant (respondent No.2) filed a complaint under Sections 354/34 IPC and Sections 3 & 4 of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act on 08.08.2008 (Annexure P-1). In that complaint, after framing of charges, evidence of complainant was started on 17.12.2014 and thereafter, Harbans Kaur was examined in chief. On 24.02.2015, one witness namely, Kulwant Singh was given up by the complainant being won over and another witness namely Sukhpal Singh did not come present for his deposition. Thereafter, complainant herself

closed her evidence on 17.11.2015. Subsequently, present application under Section 311 Cr.P.C. (Annexure P-2) was filed for recalling of aforesaid Harbans Kaur and summoning of Kulwant Singh and Sukhpal Singh as witnesses. The said application has been allowed vide impugned order dated 18.02.2016. Hence, this petition.

Heard. A perusal of the impugned order shows that the instant application has been allowed keeping in view that Kulwant Singh and Sukhpal Singh were present at the spot as stated in the complaint. However, while allowing the application, this aspect has not been looked into by the trial Court that during the trial itself, Sukhpal Singh did not come present for his deposition and Kulwant Singh had been given up by the complainant herself being won over by the accused. Another witness namely Harbans Kaur did not turn up for her cross-examination. This fact is clearly mentioned in the reply (Annexure P-3) filed by the petitioners (accused).

Another fact, which requires consideration is that the evidence of the complainant was closed on 17.11.2015 by complainant herself. Same was not closed by order of the Court. Once, one of the witnesses had been given up by the complainant herself, application under Section 311 Cr.P.C. for recalling of the same witness should not have been allowed at the final stage of the trial. In these circumstances, the impugned order is liable to be set aside.

Resultantly, the present petition is allowed and the impugned order dated 18.02.2016 is set aside.

19.04.2017
ajp

(RITU BAHRI)
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No