

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

**CRR No.3418 of 2016 (O&M)
Date of decision: 08.03.2017**

Rajan Kangar

.....Petitioner

Versus

State of Punjab

.....Respondent

CORAM:HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Deepak Gupta, Advocate,
for the petitioner.

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

Ritu Bahri, J.

This petition has been filed against the order dated 06.09.2016 passed by the Sessions Judge, Mohali, whereby application filed by accused-petitioner Rajan Kangar under Section 311 Cr.P.C. for recalling Sunish Gupta (DW-10) has been dismissed.

Aforesaid Sunish Gupta while appearing as DW-10 had deposed that he was working as Second Assistant Manager, Office of McDonalds, Dhillon Silicon Square, Chandigarh-Ambala Highway, Zirakpur. He had brought the summoned record relating to the video footage of dated 29.12.2014 (timing 7.00 P.M. to 8.00 P.M.). CD qua the said video was proved on record as Ex.DW10/A. However, the said CD was not played in order to show the presence of petitioner in the Macdonald on the said date.

In his cross-examination, DW-10 had stated that he did not have any

personal knowledge with regard to the present case. He did not know the accused-petitioner. Presence of the petitioner in the video footage would be relevant for final decision of the case as recording of the CD, Ex.DW10/A, has been duly proved by Sunish Gupta (DW-10).

While dismissing the application, trial Court has observed that an attempt was made to fill the lacuna/omissions of their case.

In the present case, the CD in question has already been exhibited as Ex.DW10-A, however, the same was not played before the trial Court at the time when this witness had come for deposition. Playing of the CD will not fill up the lacuna, as recording of the CD has been duly proved by DW-10. Hence, the said witness could be summoned again for the just decision of the case.

Resultantly, the impugned order dated 06.09.2016 is set aside and Sunish Gupta (DW-10) is ordered to be recalled for further clarifications. After recalling the said witness, CD in question be played before the trial Court so that the presence of accused-petitioner at the relevant time can be ascertained.

Allowed accordingly.

08.03.2017
ajp

(RITU BAHRI)
JUDGE

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