

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

CRL. REVISION No.1074 OF 2017 (O&M)
DATE OF DECISION : 8TH NOVEMBER, 2017

Raj Kumar Goyal

.... Petitioner

Versus

State of Punjab & others

.... Respondents

CORAM : HON'BLE MR. JUSTICE A. B. CHAUDHARI

* * * *

Present : Mr. Daygeesh Kumar Bhatti, Advocate for the petitioner.

Mr. Ramandeep Sandhu, Sr. D.A.G. Punjab.

Mr. Vivek K. Thakur, Advocate for respondents No.5 & 6.

Mr. Ravi K. Matoo, Advocate for respondents No.7.

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A. B. CHAUDHARI, J. (ORAL)

This is a petition filed by the petitioner against the impugned order dated 27.02.2017 passed by learned Special Judge, Patiala allowing the application under Section 311 Cr.P.C. filed by the prosecution for re-examination of the witness S.S. Jaggi PW-7.

Rule.

Heard forthwith with consent of counsel for the rival parties.

In FIR No.29 dated 08.06.2005 registered under Sections 166, 167, 175, 177, 191, 192, 196, 208, 209, 217, 218, 406, 409 & 120-B IPC and Section 13(1)(d) read with Section 13(2) Prevention of Corruption Act, one witness namely S. S. Jaggi was examined in examination-in-chief as PW-7 and his examination-in-chief was completed. Thereafter petitioner started his cross-examination and

during the course of cross-examination the petitioner filed certain documents and started cross-examining the said witness on the basis of those documents. The prosecution suddenly woke up during the course of cross-examination which was half way and filed an application under Section 311 Cr.P.C. for recall of the same witness i.e. PW-7. It is strange that instead of allowing completion of cross-examination of the witness in the box, the application under Section 311 Cr.P.C. was filed and allowed for recalling the same witness. Neither the Court nor the prosecution could have interfered in the cross-examination in the manner that has been done. If the prosecution had any objection about particular document or the question being put in cross-examination, that could have been taken by way of objection. But then the cross-examination part could not be stopped and interdicted by such application under Section 311 Cr.P.C. The impugned order is therefore clearly illegal.

Learned counsel for the prosecution submits that in the absence of any stay order of the proceedings in the present petition the trial Court proceeded further and completed the cross-examination as well as re-examination.

Learned counsel for the petitioner submits that he had been making repeated attempts to obtain stay of the trial, but could not succeed. He further submits that even if the cross-examination and re-examination has been completed, the impugned order having been found to be illegal, the evidence recorded after the making of the impugned order can not be read in evidence. The submission appears to be correct.

In that view of the matter, I think the entire recording of evidence, after passing of the impugned order, cannot be allowed to be

treated as evidence and the trial Court should ignore the same. At the same time this Court cannot forbid the prosecution from exercising its right of re-examination from the stage after passing of the impugned order. Liberty is thus reserved in favour of the prosecution to apply for re-examination which shall be decided according to law.

In the result, I make the following order:

ORDER

- (i) CRL. REVISION No.1074 OF 2017 is allowed.
- (ii) The impugned order dated 27.02.2017 passed by learned Special Judge, Patiala, is quashed and set aside.

8TH NOVEMBER, 2017
'raj'

(A. B. CHAUDHARI)
JUDGE

<i>Whether speaking/reasoned:</i>	<i>Yes</i>	<i>No</i>
<i>Whether Reportable:</i>	<i>Yes</i>	<i>No</i>