

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

CRR No.445 of 2017 (O&M)

Date of Decision: 09.02.2017

Malkiat Singh

... Petitioner

Versus

State of Punjab

... Respondent

CORAM:- HON'BLE MR.JUSTICE TEJINDER SINGH DHINDSA.

Present:- Mr. Samir Rathaur, Advocate for the petitioner.

....

TEJINDER SINGH DHINDSA, J.

Petitioner is facing trial in case FIR No.3, dated 04.01.2013, under Sections 406/409/420/120-B IPC and Section 13(2) of the Prevention of Corruption Act, registered at Police Station Balianwali, District Bathinda.

The instant revision petition is directed against the order dated 21.12.2016 passed by the learned Special Judge, Bathinda, whereby an application preferred under Section 311 Cr.P.C. for recalling PW3 Balwinder Pal Singh, Senior District Manager, Punjab Agro Foodgrains, Sri Muktsar Sahib for the purpose of further cross examination has been dismissed.

Learned counsel appearing for the petitioner would submit that under Section 311 Cr.P.C., there would be no limitation for exercising such power either with regard to the stage at which it is to be exercised or with regard to the manner. Learned counsel would argue that the impugned order dated 21.12.2016 has been passed without

application of mind and in a routine mechanical fashion.

Having heard counsel for the petitioner and having perused the case file, I am of the considered view that the present petition is devoid of merit.

Counsel has not been able to rebut the factual aspect as has been noticed by the trial Court in the impugned order that the application submitted under Section 311 Cr.P.C. for recalling of the prosecution witness for further cross examination was made on the basis of change of counsel. It has also not been denied that PW3 having been examined in chief on 27.08.2014 and 30.09.2014, was subjected to cross examination on 10.02.2015 as also on 08.12.2015. Clearly more than one opportunity has been availed of for cross examination of PW3.

In the light of such admitted position of fact, the impugned order cannot construed as perverse or suffering from any patent infirmity.

A coordinate Bench of this Court examined a similar issue in ***Baldev Singh Versus State of Punjab, 2007 (3) RCR (Criminal) 826*** and observed as under:

“After hearing counsel for the petitioner and counsel for the respondent/State and going through the record of the case, I am of the view that the impugned order is not sustainable. The trial Court has re-summoned prosecutrix at a belated stage without any justification. She was thoroughly cross examined by counsel for the accused. Merely with the change of a counsel, a witness cannot be

recalled for further cross examination.”

A similar view was even taken by this Court in **CRR-85-2014 (Sonu Versus State of Haryana)** decided on 14.01.2014.

No interference is warranted.

Petition is dismissed.

09.02.2017

harjeet

**(TEJINDER SINGH DHINDSA)
JUDGE**

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| i) | Whether speaking/reasoned? | Yes |
| ii) | Whether reportable? | No |