

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

SMRITI
2018/10/12 16:52
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integrity of this document

CRM-M-10234-2015

Date of Decision: 10.10.2018

Ranbir Singh

...Petitioner

vs.

Court of Sh. S.K.Gupta through Reader

..Respondent

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: Mr. R.K.Hooda, Advocate
for the petitioner.

Mr. Himmat Singh, DAG, Haryana.

ARVIND SINGH SANGWAN,J

Prayer in this petition is for setting aside the order dated 10.03.2015 (Annexure P4), vide which the application filed by the petitioner under Section 311 of Cr.P.C. in criminal complaint No. 80A-AD under Section 193 IPC for granting one more opportunity to cross-examine PW1-Om Parkash was declined.

On 10.08.2017, after hearing the counsel for the parties, noticing that in the statement of PW1-Om Parkash (Annexure P2), it is not mentioned at what point, the cross-examination of aforesaid Om Parkash started and who had cross-examined this witness, therefore, the report of the trial Court was sought. The trial Court was directed to send photocopies of the original record consisting the statement of PW1-Om Parkash dated 09.09.2014 as well as the photocopy of interim order passed on 09.09.2014 to show if learned counsel for the petitioner was present and cross-examination was conducted by him or not.

The trial Court has furnished photocopy of statement of PW1-Om Parkash which is verbatim the same as attached by counsel for the petitioner and perusal of the same shows that neither it is mentioned at what stage, the cross-examination started nor it is mentioned which counsel has conducted the cross-examination.

A perusal of order dated 09.09.2014, which was passed immediately after recording the statement of PW1-Om Parkash, shows that it is silent about this fact.

Learned State counsel, on instructions from SI Ramanand and on the basis of the reply, filed by way of affidavit of DSP State Vigilance Bureau, Gurgaon, has, however, opposed the prayer on the ground that no ground is made out for recalling the aforesaid witness.

After hearing learned counsel for the parties, I find merit in the present petition.

As noticed above, it is not clear from the statement, which is in vernacular of PW1-Om Parkash, when the cross-examination of the witness was started, the counsel who conducted the same, his name is not mentioned in the statement. Therefore, the petitioner has rightly submitted that no effective opportunity was granted to him to cross-examine PW1-Om Parkash in view of the judgment of Hon'ble Supreme Court of India in **2012 (3) R.C.R. Criminal 653 P.Sanjeeva Rao versus State of A.P.,** wherein it is held that if cross-examination of a witness is not conducted due to mistake of counsel, the witness can be recalled under Section 311 Cr.P.C.

In view of the above, the present petition is allowed. Petitioner is granted one more effective opportunity to cross-examine PW1-Om Parkash.

The parties are directed to appear before the trial Court on 29.10.2018 and trial Court will fix a date for summoning the aforesaid witness for the purpose of cross-examination.

10.10.2018
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(ARVIND SINGH SANGWAN)
JUDGE

Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No