

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-14930-2018

Date of Decision: 14.05.2018

Balwant Singh

.....Petitioner

Vs.

State of Punjab

.....Respondent

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

Present: Mr. Amandeep Chhabra, Advocate,
for the petitioner.

Mr. V.G. Jauhar, Sr. D.A.G., Punjab.

AMOL RATTAN SINGH, J. (ORAL)

The present petition has been filed under Section 482 Cr.P.C., seeking quashing of the order dated 31.08.2017 (Annexure P-3), passed by the learned Sub Divisional Judicial Magistrate, Dhuri, District Sangrur, in case No. 105/01.12.2015, titled as **State vs. Bhagwant Singh and others**, arising from FIR No. 72, dated 08.10.2015, registered at Police Station Sherpur, District Sangrur, alleging therein the commission of offences punishable under Sections 325/323/34 IPC, whereby the application under Section 311 Cr.P.C., filed by the petitioner for recalling prosecution witness no. 2, namely Chitwant Singh, (he being one of the eye witness of the case as the earlier cross-examination was recorded wrongly and illegally), has been dismissed.

As already noticed in the previous order dated 25.04.2018, learned counsel for the petitioner had pointed towards the end of the cross-examination of PW-2, Chitwant Singh, where he had testified to the effect that he had so testified

only because of a grudge that he bore against Ranjit Kaur, as she had stopped him from digging up the soil.

He had further submitted that in fact his counsel should have actually sought permission of the Court to cross-examine the said witness on that aspect, but had omitted to do so, for which the petitioner should not be penalized in perpetuity.

On query on that date, he had also submitted that other than Chitwant Singh, only one prosecution witness, i.e. Balwant Singh, had filed his affidavit by way of his examination-in-chief, with no other witness having been examined so far.

Pursuant to notice issued, learned counsel for the State submits that the trial Court having seen that no cross-examination was sought by petitioners' counsel, even when PW-2 had testified to the effect that he had testified in favour of the accused only because of a grudge that he bore against the complainant, that opportunity having been lost, the petitioner has no right thereafter, to file an application for recalling the witness, six months later.

Having considered the arguments on both sides, I agree with the submissions of learned counsel for the petitioner, that on such a statement having been made, though correctly of course counsel for the petitioner should have at that stage itself either sought for the witness to be declared to be hostile, or at least to be cross-examined on that particular issue, which he did not, the petitioner should not however be penalized in perpetuity, on something which may go to the root of the matter.

Consequently, this petition is allowed and the impugned order dated 31.08.2017, Annexure P-3, is set aside, with the petitioner given one effective opportunity to cross-examine the aforesaid witness, only as regards that part of his

testimony.

Of course, effective opportunity would not mean that the petitioner would have a right to get the matter delayed by seeking adjournments from time to time before the witness actually appears. The trial Court would take due care of that aspect.

May 14, 2018
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(AMOL RATTAN SINGH)
JUDGE

Whether speaking/reasoned	Yes
Whether Reportable	Yes