

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

CRM-M-2437-2018

Date of decision:-22.1.2018

Harmander Singh @ Kala and another

...Petitioners

Versus

State of Punjab

...Respondent

CORAM : HON'BLE MR. JUSTICE H.S. MADAAN

Present : Mr.Deepak Aggarwal, Advocate
for the petitioners.

H.S. MADAAN, J.

This petition under Section 482 Cr.P.C. has been filed by accused Harmander Singh @ Kala and Sukhmander Singh @ Mander seeking setting aside of order dated 13.12.2017 passed by Judge, Special Court, Bathinda dismissing the application under Section 311 Cr.P.C. filed by the petitioner Sukhmander Singh @ Mander for recalling PW3 Constable Sai Singh for further cross-examination.

I have heard learned counsel for the petitioners besides going through the record.

Examination-in-chief of PW3 Constable Sai Singh was recorded partly and further examination-in-chief was deferred, which was then got conducted on 23.1.2017. Thereafter, the accused moved an application for recalling the said witness for further cross-examination

contending that inadvertently counsel for the accused could not put questions to witness regarding identity of the accused and how PW Sai Singh was known to accused – Sukhmander Singh and such questions being necessary for proper adjudication of the case, the witness be recalled for further cross-examination.

The application was opposed by the State counsel and then vide the impugned order the trial Court dismissed the application with following observations:

The only plea of the accused for filing this application is that because of some inadvertence, learned counsel for the accused could not put questions to the PW Sai Singh regarding the identity of the accused. Considering and looking such like plea of the accused will tantamount to grant second innings to the accused for cross examining a witness already examined, which is not permissible under law of evidence. So, the application is hereby dismissed.

I on my part do not find any illegality or infirmity in the impugned order. The application so filed is quite vague. The petitioners are seeking recalling of the witness for the reason that inadvertently counsel for the accused could not put questions to witness regarding identity of the accused and how the witness knew Sukhmander Singh. But a very perusal of his examination-in-chief goes to show that the witness had stated therein that Investigating Officer had inquired from rider of the motorcycle, who was apprehended and he disclosed his name as Harmander Singh and the person who had absconded from the

spot as Mander Singh son of Prem Singh @ Bhappa and such accused was previously known to him since he had seen him at the bus stand village chowk so many times. Thus, no doubt is left in mind as to how the witness was acquainted with the accused. The cross-examination of accused is quite lengthy. It is not case of the petitioners that their counsel was a novice or new Advocate lacking in experience. The application seems to have been filed just to prolong the trial and there is absolutely no ground to recall the witness for the purpose of asking the questions as mentioned in the application.

The petition being without merit stands dismissed accordingly.

(H.S.MADAAN)
JUDGE

22.1.2018
Brij

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No