

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

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CRM-M No.2557 of 2018

Date of Decision: January 22nd, 2018

Randeep Singh

...Petitioner

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr. Ravinder Hooda, Advocate
for the petitioner.

AUGUSTINE GEORGE MASIH, J. (ORAL)

Petitioner, who is the complainant and has faced cross-examination on 06.06.2017, has approached this Court impugning the order dated 15.12.2017 passed by the learned Additional Sessions Judge, Jind, whereby an application under Section 311 Cr.P.C. filed by the counsel for the accused, has been allowed and the petitioner who appeared as PW-1 has been recalled on 12.01.2018 for further cross-examination.

It is the contention of learned counsel for the petitioner, especially with reference to the cross-examination of the petitioner on 06.06.2017 that the plea of production of the records especially with reference to the licence and the FSL report was duly considered for deferring the cross-examination, but the request was declined at that stage, cannot now be accepted at this stage merely because of the change of counsel. In support of this contention of his, he has placed reliance upon the judgment of the Supreme Court in *AG Versus Shiv Kumar Yadav and Anr. 2016(1) SCC (Cri) 510*. He submits that merely because a counsel has been changed cannot be a ground for recalling a witness who has already been cross-examined. He, therefore, prays that the impugned order cannot sustain and deserves to be set aside.

I have considered the submissions made by counsel for the petitioner and have gone through the deposition of the petitioner dated 06.06.2017 as also the impugned order dated 15.12.2017.

A perusal of the cross-examination of the petitioner dated 06.06.2017 indicates that the counsel for the accused wanted the production of record which at that stage was not accepted. The production of the case property said to be not accepted on the ground that it was not felt justified at that stage by the Court. Perusal of the impugned order dated 15.12.2017 would show that two prosecution witnesses namely Jaswant and Dr. Pankaj were examined, whereas two other witnesses namely Dr. Kunal Khanna and Dr. Sandeep Giri were given up by the Public Prosecutor. In the application under Section 311 Cr.P.C. which has been filed by the accused, the insistence of the party and especially the accused, without there being the FSL report, was highlighted. The Court having considered the same has passed a reasoned order by recording that because of non-availability of the original counsel, who could not cross-examine the prosecution witness Randeep Singh-complainant, especially when the original arms licence has been renewed and placed on the file, the Court in the larger interest and justice and for giving a fair opportunity to the accused, had proceeded to allow the application under Section 311 Cr.P.C. The trial Court is the best judge with regard to the case which is under trial and, therefore, has appreciated the position as it existed when the order dated 15.12.2017 was passed. The order being based upon the facts and circumstances, cannot be said to be merely dependent upon the change of counsel.

The judgment as relied upon by the counsel in

AG Versus Shiv Kumar Yadav and Anr's case (supra) would not be

applicable to the facts of the present case as in that case merely because the counsel has changed and all the 29 witnesses were being sought to be recalled for cross-examination, the Court had proceeded to observe so whereas, in the present case it is not such a situation. Here only one of the witnesses i.e. PW-1 Randeep Singh, the complainant, who is the main witness has been recalled for cross-examination. The order impugned being based upon proper appreciation of the facts and circumstances, do not call for any interference by this Court.

The present petition being devoid of merit is hereby dismissed.

Counsel for the petitioner, at this stage, submits that the petitioner fears for his life and liberty, especially while appearing before the Court and now for his further deposition as per the order dated 15.12.2017.

In case a proper application is filed by the petitioner prior to the date fixed, the Court shall ensure that even the apprehension of the petitioner, if any, is taken care of, so that he can appear before the Court without any fear.

January 22nd, 2018
Puneet

(AUGUSTINE GEORGE MASIH)
JUDGE

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No