

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

**Criminal Misc. No.M-35330 of 2018 (O&M)
Date of Decision: September 11, 2018**

Bhim Sain

.....PETITIONER(s).

VERSUS

State of Haryana

....RESPONDENT(s).

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Abhinav Kalia, Advocate
for the petitioner (s).

SURINDER GUPTA, J.

This is petition under Section 482 Code of Criminal Procedure (for short-Cr.P.C.) seeking quashing of order dated 08.08.2018 (Annexure P-8) passed by learned Additional Sessions Judge, Sirsa in case FIR No.443 dated 18.10.2015 registered for the offences punishable under Sections 148, 323, 325, 342, 365, 367 of Indian Penal Code at Police Station Rania, District Sirsa, vide which application moved by the petitioner under Section 311 Cr.P.C. has been dismissed.

Heard.

Petitioner moved application under Section 311 Cr.P.C. for recall of witnesses PW5 Dr. Neeraj, PW6 Dr. Kuldeep Sain and PW13 ASI Mange Ram on the ground that their cross-examination was done by proxy counsel Mr. Billu Singh, Advocate in the presence of accused and some important questions have been left to be asked in cross-examination. The

application was declined by learned trial Court with the observations as follows:-

“5. From the perusal of the case file, it reveals that PW5 Dr. Neeraj, PW6 Dr. Kuldeep Sain were examined on 5.5.2017 and they were cross-examined by the counsels of the remaining accused as well as by the learned proxy counsel on behalf of accused Bhim Sain. PW13 ASI Mange Ram was examined on 13.11.2017. Learned counsel for the applicant-accused Bhim Sain had the opportunity at the very initial stage to file the present application for recalling of the aforesaid three witnesses but he did not file any application to recall the aforesaid witnesses. The present application has been filed only when the case was fixed for recording the statement of accused u/s 313 Cr.P.C. Therefore, to my mind, there is no merit in the application because it is nowhere mentioned in the application what important questions could not be asked from the aforesaid witnesses in the cross-examination and why the application was not filed just after the examination of the witnesses. If the application is allowed then it would tantamount for retrial. With these observations, I am of the considered opinion that no ground is made out to recall PW5 Dr. Neeraj, PW6 Dr. Kuldeep Sain and PW13 ASI Mange Ram. Hence, the application filed by the applicant-accused is hereby dismissed.”

Learned counsel for the petitioner has argued that there are certain contradictions in the statements of PW5 and PW6, which could not be brought on record. In the report of PW5 Dr. Neeraj, 3 fractures were found while as per PW6 Dr. Kuldeep Sain, there were four fractures.

PW5 Dr. Neeraj had conducted x-ray examination of injured

Balwant Singh and had produced on file x-ray films and report, while PW6 Dr. Kuldeep Sain had reported about x-ray of Balwant Singh and gave his report with x-ray films. Both the witnesses are of documents, which have been placed on record. ASI Mange Ram PW13 is the Investigating Officer. Perusal of his statement shows that he has been cross-examined at length and his cross-examination runs into about 5 typed pages. Nothing has been stated in the application as to what important questions remain to be asked from PW13.

Learned trial Court has rightly declined the application filed by the petitioner and I find no reason to interfere with the well reasoned order passed by the trial Court.

This petition has no merits. Dismissed.

September 11, 2018
Sachin M.

(SURINDER GUPTA)
JUDGE

Whether speaking/reasoned: ***Yes/No***

Whether Reportable: ***Yes/No***