

In the High Court of Punjab and Haryana at Chandigarh

**Crl. Misc. No. M-40649 of 2015
Date of Decision: 17.9.2018**

Sukhjot Singh

.....Petitioner

Versus

State of Punjab

.....Respondent

CORAM: HON'BLE MRS. JUSTICE ANITA CHAUDHRY

Present: Mr. Sarju Puri, Advocate
for the petitioner.

Mr. Jagmohan Ghuman, DAG, Punjab.

ANITA CHAUDHRY, J

The petitioner has assailed the order dated 29.10.2015 (Annexure P-3) passed by the Magistrate vide which the right to summon a witness in defence has been declined.

Counsel for the petitioner contends that a case under Section 306/34 IPC was registered and the proceedings under Section 174 Cr.P.C. had been initiated and the Executive Magistrate had recorded the statements of the witnesses and after the close of the prosecution evidence, the accused moved an application for summoning the Executive Magistrate and one more witness and the trial Court partly allowed the application but declined the second prayer and did not allow him to summon the Executive Magistrate who had conducted the proceedings under Section 174 Cr.P.C. The counsel further submits that the report prepared by the Executive Magistrate is part of the challan and the Tehsildar was cited as a witness but

was not examined and without giving any reasons, the application has been

dismissed.

It is not disputed before me that the Executive Magistrate had carried out the proceedings under Section 174 Cr.P.C. It is also not disputed that the Executive Magistrate had recorded the statements and he was cited as a witness but the prosecution did not examine him. The accused now wants to summon the Executive Magistrate but the trial Court has declined but has failed to give any reasons. It has only been observed that the Executive Magistrate had recorded the statements and those witnesses have already been examined therefore, no useful purpose would be served. The reasons for dismissal for the application are perverse. The Executive Magistrate had formed an opinion and had given his report and was cited as a witness. No reason was given to give up the prosecution. As this witness was not examined, therefore the accused had the right to call him as a defence witness.

The order dated 29.10.2015 passed by the trial Court is set aside partly. The petition is allowed.

**(ANITA CHAUDHRY)
JUDGE**

September 17, 2018
Gurpreet

Whether speaking/reasoned	:	Yes
Whether reportable	:	No