

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

CRM-M-42106-2014 (O&M)

Date of decision:- 22.01.2018

Jagat Ram and another

.....Petitioners

Versus

State of Punjab and another

.....Respondents

CORAM : HON'BLE MR.JUSTICE MAHABIR SINGH SINDHU

Present: Mr. Ashok Giri, Advocate
for the petitioners.

Mr. Harbir Sandhu, AAG, Punjab.

Mr. Vipul Dharmani, Advocate
for respondent No.2.

MAHABIR SINGH SINDHU, J. (ORAL)

Present petition has been filed under Section 482 Cr.P.C. for setting aside the impugned order dated 14.02.2013 (Annexure P-3) vide which application under Section 311 Cr.P.C., filed by the prosecution, to examine HC Avtar Singh, as additional evidence has been declined.

The contention is that as a matter of fact the investigating officer of the case HC Sohan Singh had died, but prior thereto the said Avtar Singh has been given up as unnecessary. However, when the prosecution came to know about the factum of death of Sohan Singh, then

immediately an application under Section 311 Cr.P.C. has been filed by the prosecution for examination of said Avtar Singh.

Learned counsel appearing on behalf of respondents No.2 to 5 have strongly opposed the contention raised by learned counsel for the petitioners on the ground that the prosecution were very well aware of factum of death of HC Sohan Singh and they were granted numerous opportunities, but despite that HC Avtar Singh was not examined and the present petition is not maintainable.

Heard learned counsel for both the sides and perused the paper-book.

Perusal of paper-book reveals that the impugned order was challenged before the Revisional Court and the prosecution was granted liberty to examine HC Avtar Singh, vide order dated 13.06.2013, by learned Additional Sessions Judge, (Fast Track Court), Rupnagar and in pursuance thereto, HC Avtar Singh has already been examined as PW5 on 30.09.2012 and that fact has not been disputed by the learned counsel appearing on behalf of private respondents. It further transpires that order of revisional Court was challenged by the private respondents by way of CRM-M-26352-2013 before this Court and the same was accepted, vide order dated 25.11.2014 on the ground of maintainability. However, the liberty was granted to the present petitioners to challenge the original order of learned trial Court i.e. dated 14.02.2013 by availing remedy under the law and in these circumstances, the present petition has been filed.

In view of the fact that HC Avtar Singh has already been examined as PW5 and as a matter of fact that the entire prosecution evidence is over and it was only technicality that the revision petition was allowed by this Court just on the ground of maintainability of revision petition before the Additional Sessions Judge against an interlocutory order and the order dated 13.06.2013 was set aside. Otherwise in substance, when the witness, who was to be examined i.e. HC Avtar Singh, has already been examined as PW-5, there seems to be no justification that the deposition recorded by the learned trial Court should be scored out at this stage.

In view of the above, the present petition is allowed and the impugned order dated 14.02.2013 (Annexure P-3), passed by learned Sub-Divisional Judicial Magistrate, Anandpur Sahib, is set aside.

(MAHABIR SINGH SINDHU)
JUDGE

January 22, 2018
naresh.k

Whether reportable?	Yes
Whether reasoned/speaking?	Yes