

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CrI. Misc. No. M-43616 of 2017
Date of Decision: March 14, 2018

Nabba @ Nabab and others

.....Petitioners

versus

State of Haryana and another

.....Respondents

CORAM: HON'BLE MR.JUSTICE SUDHIR MITTAL

Present: Mr. Sandeep Kotla, Advocate
for the petitioners

Mr. Munish Sharma, AAG Haryana

Sudhir Mittal, J. (Oral)

The petitioners seek quashing of order dated 23.01.2017 (Annexure P-5) passed by Additional Sessions Judge, Nuh, whereby application moved by the petitioners under Section 311 Cr.P.C. for summoning of witnesses PW-5 and PW-6 for cross-examination was dismissed.

Learned counsel for the petitioners has drawn my attention to the application filed under Section 311 Cr.P.C. to contend that the counsel for the defence was busy in a case in which the Hon'ble Supreme Court of India had given directions for completion of the trial within a limited time frame and, therefore, he was unable to appear on the date on which PW-5 and PW-6 were to be cross-examined. Thus, it is submitted that an associate had appeared on the concerned date and had prayed for time as he was not aware of the facts of the case. Learned trial Court has erred in rejecting his request.

Learned State counsel on the other hand supports the order of the trial Court.

Perusal of the impugned order shows that the associate of the defence counsel namely Sh. S.D. Sharma, Advocate had cross-examined three other witnesses i.e. PW-1, PW-2 and PW-3 on the said date. Under the circumstances, the excuse that he was not aware of the facts of the case, is just that an excuse without any basis. It is further recorded in the said order that Sh. S.D. Sharma, Advocate had refused to cross-examine PW-5 and PW-6, although opportunity to do so was granted. Thus, the trial Court was justified in rejecting the application filed under Section 311 Cr.P.C.

However, keeping in view the fact that the evidence of PW-5 and PW-6 may be ruled out for consideration on account of the fact that the said witnesses had not been cross-examined, it would be just and appropriate to grant one opportunity to the defence to cross-examine the said witnesses. They shall be cross-examined by the defence on the next date of hearing or within one week thereof at its own risk and expense. No further opportunity shall be granted.

The petition is, accordingly, disposed of.

March 14, 2018

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[SUDHIR MITTAL]
JUDGE

Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No