

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-49279-2017

DATE OF DECISION: AUGUST 23, 2018

PARAMJIT KAUR

...PETITIONER

VERSUS

STATE OF PUNJAB AND OTHERS

...RESPONDENTS

CORAM: HON'BLE MR. JUSTICE H.S. MADAAN.

PRESENT: MR. AMIT ARORA, ADVOCATE
FOR THE PETITIONER.

MR. RAKESHINDER SINGH SIDHU, AAG, PUNJAB.

MR. INDER PAL SINGH, ADVOCATE
FOR RESPONDENTS NO.2 TO 9.

H.S. MADAAN, J.(ORAL)

Feeling aggrieved by the order dated 27.11.2017 (Annexure P-4) passed by Sub Divisional Judicial Magistrate, Khadoor Sahib vide which he had dismissed an application under Section 311 Cr.P.C. filed by the prosecution for summoning of Jaswant Singh s/o Rattan Singh and MHC of Police Station Sadar Tarn Taran to examine them, the complainant has brought the present petition. The application was essentially dismissed for the reason that the trial was at an advanced stage and the prosecution wanted to fill-up the lacuna.

Learned counsel for the petitioner/complainant has contended that the eye witnesses of the occurrence, namely, Arjun Singh and Sukhjinder Singh have passed away during the pendency of the trial, Jaswant Singh is the husband of the petitioner and one of the victims also. Though, he was not cited as a witness by the investigating agency, but he

happens to be an eye witness. The necessity to examine him arose on account of the death of two cited eye witnesses, namely, Arjun Singh and Sukhjinder Singh. As regards MHC of Police Station Sadar Tarn Taran, he submits that the necessity to examine him is there, since an objection has been taken by the defence that Jaswant Singh was behind bars at the time of incident and could not possibly be present there at the spot.

Though, learned counsel for the accused/respondents is opposing the present petition, however, after hearing the rival contentions and going through the records as well as the law laid down by the Hon'ble Apex Court in **Rajaram Prasad Yadav vs. State of Bihar and another, 2013 (3) RCR(Criminal) 726**, I find that the application for additional evidence moved by the prosecution deserved to be allowed and it wrongly been dismissed by the trial Court for unconvincing reasons. The defence shall get an opportunity to cross-examine these witnesses and then to lead evidence in defence. As such, no prejudice is going to be caused to them. Therefore, the instant petition is accepted, the impugned order passed by Sub Divisional Judicial Magistrate, Khadoor Sahib is set aside and the application under Section 311 Cr.P.C. for additional evidence moved by the prosecution is allowed with a direction to the trial Court to fix some date for examination of these PWs and thereafter, the trial may proceed in accordance with law.

Petition is allowed.

August 23, 2018
Gulati

(H.S. MADAAN)
JUDGE

Whether Reportable : Yes
Whether Speaking/Reasoned : No