

Criminal Misc. No. M- 6251 of 2017 (O&M)

Date of decision : February 22, 2018

Satgur Singh and another

.....Petitioners

Versus

State of Punjab

....Respondent

CORAM:- HON'BLE MRS. JUSTICE LISA GILLPresent: Mr. Hardeep Singh, Advocate
for the petitioners.

Ms. Seena Mand, DAG, Punjab.

LISA GILL, J.

This petition has been filed for setting aside order dated 08.12.2016 learned Additional Sessions Judge, Patiala vide which application under Section 311 Cr.P.C. filed by the petitioners for recalling of the witnesses PW1 - Darshan Singh and PW2 - Baljinder Singh for cross examination has been dismissed.

The petitioners are accused in FIR No. 89 dated 21.10.2015 under Sections 302, 304B, 34 IPC registered at Police Station Ghagga, District Patiala.

It is vehemently argued that PW1 - Darshan Singh is the complainant/father of the deceased and PW2 - Baljinder Singh is the brother of the deceased. It is submitted that irreparable loss and manifest injustice shall be caused to the petitioners, in case, an opportunity to cross examine the said material witnesses is not afforded to them. Petitioner No. 1, it is submitted, is in custody and petitioner No. 2 is his illiterate mother, therefore, they should not be held responsible for non-appearance of their counsel at the relevant time. It is, thus, prayed that one opportunity be afforded to the petitioners to cross examine the said witnesses.

Learned counsel for the State has, however, opposed this petition while submitting that sufficient opportunities were afforded to the petitioners for cross examination of the said witnesses but they failed to avail the same, therefore, impugned order dated 08.12.2016 should be upheld. On instructions from ASI Raj Kumar, it is informed that prosecution evidence has not yet been closed. It is, thus, prayed that this petition be dismissed.

Heard, learned counsel for the parties.

The petitioners are the accused in FIR No. 89 dated 21.10.2015. Their application under Section 311 Cr.P.C. for recalling of the above said witnesses was dismissed vide impugned order dated 08.12.2016 passed by the learned Additional Sessions Judge, Patiala. It is specifically mentioned in the said order that the above said two witnesses were examined in-chief on 05.09.2016 and their cross examination was deferred on the request of defence counsel for 08.09.2017. Both the said witnesses were present on 08.09.2017 but could not be cross examined due to a written request for adjournment circulated by the defence counsel. The matter was thereafter adjourned to 27.09.2017. The witnesses were again present but a request was made on the ground that the defence counsel was busy in some other matter. The matter was taken up again in the post lunch session but the defence counsel did not turn up. It is in this situation that cross examination of both the witnesses was declared 'Nil' despite opportunity.

It is specifically argued by learned counsel for the petitioners that defence counsel before the learned trial Court could not appear on the last occasion as he was arguing in an action plan case in another court.

It is not disputed that both the said witnesses are material witnesses. PW1 -

Darshan Singh is the complainant – father, PW2 Baljinder Singh is the brother of the deceased. Needless to say cross examination of both the witnesses is indeed important for the defence. It is not in dispute that petitioner No. 1 is still in custody. It has been held by the Hon'ble Supreme Court in *P. Sanjeeva Rao Vs. State of A.P, 2012 (7) SCC 56* that looking to the consequences of denial of opportunity to cross-examine the witness it is preferable to err in favour of the appellant.

Keeping in view the facts and circumstances of the case, this petition is allowed. Order dated 08.12.2016 passed by the learned Additional Sessions Judge, Patiala is set aside. It is directed that one opportunity be afforded to the petitioners to cross examine both the witnesses PW1 - Darshan Singh and PW2 - Baljinder Singh subject to deposit of ₹10,000/- as costs to be paid to the complainant. It is made clear that no further opportunity shall be afforded to the petitioners.

February 22, 2018
rts

(Lisa Gill)
Judge

Whether speaking/reasoned :	Yes/No
Whether reportable :	Yes/No