

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRR-3410-2018 (O&M)

Date of Decision:- 9.10.2018

Sukhbir

... Petitioner

Versus

State of Haryana

... Respondent

CORAM: HON'BLE MR. JUSTICE GURVINDER SINGH GILL

Present:- Ms. Amrita Nagpal, Advocate for the petitioner.

GURVINDER SINGH GILL, J. (Oral)

The petitioner assails order dated 19.9.2018 passed by the learned Additional Sessions Judge, Panipat whereby the application under Section 311 Cr.P.C. filed by the petitioner/accused seeking recalling of PW-3 Vikas for his further cross-examination, has been dismissed.

The petitioner along with other co-accused is facing trial for offence under Section 379-B read with Section 34 of IPC, wherein during the course of prosecution evidence, the prosecution examined PW-3 Vikas who was duly cross-examined on behalf of the accused on 25.1.2018. Subsequently, after about 9 months an application dated 19.9.2018 was filed under Section 311 Cr.P.C. on behalf of the petitioner/accused seeking recalling of PW-3 Vikas for his further cross-examination mainly on the

ground that the earlier counsel, engaged by the petitioner had not put relevant questions to the said witness. The relevant extract from the said application (Annexure P-2) reads as follows:

“2. That on 25.01.2018 PW-3 had examined before this Hon'ble Court, but previous counsel of accused could not put some relevant and necessary questions to the PW-3 regarding recovery of mobile, marka Samsung and its bill etc. and thereafter the accused/applicant engaged new counsel, who after going through the case file came to know the above mentioned facts, hence the reexamination of above mentioned witness is very much essential/necessary for the proper adjudication of the case.”

The learned trial Court dismissed the application vide impugned order dated 19.9.2018 which has been assailed by way of filing the present revision petition.

Learned counsel for the petitioner has submitted that the material questions had not been put to the witness by the earlier counsel for the petitioner/accused and it was upon engaging a fresh counsel that the shortcomings in the cross-examination were noticed and that since the said short-comings are material and would seriously prejudice the defence of the petitioner/accused, therefore, the application deserves to be allowed and one opportunity needs to be afforded to the petitioner/accused to further cross-examine the witness. It has further been submitted that the powers of the Court under Section 311 Cr.P.C. are very wide and a witness can be recalled

at any stage of the trial even after the final arguments had been heard but before pronouncement of the judgment.

I have considered the aforesaid submissions and have perused the impugned order dated 19.9.2018 and also the application under Section 311 Cr.P.C moved on behalf of the petitioner.

A perusal of the application shows that the only ground put forth for recalling PW-3 Vikas that the earlier counsel has not effectively cross-examined the witness i.e. PW-3 Vikas. However, a perusal of statement of PW-3 Vikas (Annexure P-3) shows that cross-examination had been conducted at length. In any case, change of counsel would not furnish a valid ground for recalling a witness. In these circumstances, I do not find any infirmity in impugned order dated 19.9.2018 and the same is hereby upheld.

There is no merit in this revision petition and the same is dismissed.

October 9, 2018
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(Gurvinder Singh Gill)
Judge

Whether speaking /reasoned	Yes / No
Whether Reportable	Yes / No