

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

CRM-M-54843-2018 (O&M)

Date of Decision:-11.12.2018

Jatinder Kumar

... Petitioner

Versus

State of Punjab and others

... Respondents

CORAM: HON'BLE MR. JUSTICE GURVINDER SINGH GILL

Present:- Mr. Satbir Rathore, Advocate for the petitioner.

GURVINDER SINGH GILL, J.(Oral)

1. The petitioner assails order dated 3.12.2018 passed by learned Judicial Magistrate 1st Class, Dasuya, whereby an application filed by the petitioner/accused for recalling the witnesses i.e. PW-1 Amritpal Singh and PW-2 Balbir Singh for their further cross-examination, had been declined.
2. The petitioner is facing trial in respect of offences punishable under Sections 304-A, 279, 337, 338 and 427 of Indian Penal Code, 1860, wherein the complainant Amritpal Singh and eye-witness Balbir Singh were examined by the trial Court on 15.3.2017 and 9.5.2017. After the prosecution evidence had concluded and the matter was at the stage of recording defence evidence, an application was moved on behalf of the accused for recalling the aforesaid prosecution witnesses for their further cross-examination. The grounds mentioned in the said application (Annexure P-2) read as follows:-

“2. That the above said witnesses examined before the Hon'ble court on dated 15.03.2017/09.05.2017 during the cross

examination, inadvertently counsel of the accused could not cross examine on some material questions/points to the above said witnesses, which is very much required for the just and proper adjudication of the instant case.

3. That, as the said witnesses are alleged to be Eye Witnesses by the prosecution, but there are some material now available with the defence which is required to be put both the witnesses and the same material was not knowledge of the defence counsel when they were cross examined.”
3. A perusal of the aforesaid grounds of application shows that a very vague averment has been made therein that the counsel, due to inadvertence, could not cross-examine the PWs on material questions and that there is some material available now with the accused, which is required to be put to the witnesses. The learned trial Court, however, dismissed the application while observing that the same had been filed at a belated stage and that no sufficient grounds have been made therein for recalling the witnesses.
4. Having heard the learned counsel for the petitioner, I find that the application does not disclose any valid ground so as to justify recalling of the prosecution witnesses, who have already been cross-examined on behalf of the accused.
5. During the course of arguments, the learned counsel placed reliance upon 2018(3) R.C.R. (Criminal) 708 Khatta Singh Versus C.B.I. Chandigarh and others; 2006(4) R.C.R. (Criminal) 113 U.T. of Dadra & Haveli and another Versus Fatehsinh Mohansinh Chauhan; 1999(3) R.C.R. (Criminal) 440 Rajendra Prasad Versus The Narcotic Cell through its Officer-in charge, Delhi; 2011(3) R.C.R. (Criminal) 299 M/s Shareen Hire Purchase Pvt. Limited Versus Kulwinder Kaur and 2005(1) R.C.R. (Criminal) 15 Sanjay

and another Versus State of Haryana and another so as to contend that the powers of the Court for recalling of a witness are very wide and that the witnesses can be recalled at any stage prior to pronouncement of the judgment. There is certainly no dispute as regards the broad preposition of law set forth in the cited judgments. However, the said discretion for recalling a witness has to be exercised on the basis of a valid ground necessitating recalling of a witness. In the present case, no valid ground is forthcoming so as to justify recalling of any of the witness who have been effectively cross-examined. I do not find any infirmity in the impugned order and the same is hereby upheld. There is no merit in this petition and consequently the same is hereby dismissed.

11.12.2018

pankaj

(Gurvinder Singh Gill)
Judge

Whether speaking /reasoned Yes / No

Whether Reportable Yes / No