

Sr. No.123

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

CRM-M-3632-2019

Date of decision:31.01.2019

Ashwani Kumar

.....Petitioner

versus

State of Punjab

.....Respondent

Coram: HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

Present: Mr. Vijay Rana, Advocate
for the petitioner.

Rajbir Sehrawat, J(Oral)

Present petition has been filed seeking quashing of the impugned order dated 11.12.2018(Annexure P-4) passed by the Court of Additional District and Sessions Judge-XII, Jalandhar, District Jalandhar vide which an application filed by the petitioner under Section 311 of Cr.P.C for re-summoning the defence witness has been dismissed.

A bare perusal of the Order shows that the petitioner had earlier summoned the said witness in defence evidence. He was granted opportunity twice to examine the said witness. However, for one reason or the other, the petitioner had not examined the said witness, statedly, since the counsel for the petitioner before the Trial Court; was not available. Accordingly, the said witness was discharged by the Trial Court. Thereafter, the application under Section 311 Cr.P.C was moved by the petitioner. The same has been dismissed on the ground that the petitioner had already been granted sufficient opportunities to examine the said witness.

Learned counsel for the petitioner submits that the omission to examine the said witness is unintentional on the part of the petitioner. The counsel for the petitioner was in genuine difficulty, therefore, he could not get examined the said witness. It is further contended that being layman, the petitioner himself could not have examined the said witness in absence of the counsel. Hence the petitioner deserves to be granted one opportunity to examine the said witness.

Having heard the learned counsel for the petitioner and having perused the paper book, this Court finds no illegality or irregularity in the order passed by the Court below. Therefore, impugned order dated 11.12.2018(Annexure P-4) passed by the Court of Additional District and Sessions Judge-XII, Jalandhar, District Jalandhar does not call for interference on merits of the case.

However, since the petitioner is an accused and he is attempting to examine the said witness in defence, therefore, to remove even an iota of perception in the mind of the accused/petitioner that he is not being granted sufficient opportunity to defend himself, it would not be unjustified if the petitioner is granted one more effective opportunity to lead the said evidence before the Trial Court, but by putting him to some appropriate financial burden.

Accordingly, the present petition is disposed of with a direction that the petitioner be granted one effective opportunity to examine the witness mentioned in the application moved by him under Section 311 Cr.P.C. However, this opportunity is subject to the petitioner paying a costs of Rs.15,000/-. The said costs is ordered to be deposited with Institute for Blind, Sector:26,Chandigarh. It is further clarified that the petitioner would be granted opportunity to examine this witness only after he produces the receipt of having deposited the costs; as mentioned above.

31st January, 2019

Shivani Kaushik

[RAJBIR SEHRAWAT]

JUDGE

Whether speaking/reasoned *Yes/No*

Whether Reportable *Yes/No*