

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

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**C.R.M-M No.6325 of 2019 (O&M)
Date of Decision : 11.02.2019**

Ashish Garg

..... Petitioner

Versus

State of Punjab

..... Respondent

CORAM : HON'BLE MR.JUSTICE AJAY TEWARI

Present : Mr. Piyush Sharma, Advocate
for the petitioner.

AJAY TEWARI, J. (ORAL)

This is a petition under Section 482 Cr.P.C. for setting aside the order dated 17.10.2018 (Annexure P-1) passed by the Special Court, Ferozepur in FIR No.1 dated 11.01.2012 registered under Sections 406, 409, 420, 120-B IPC and Sections 13(1)(e) and 13(2) of the Prevention of Corruption Act, 1988 at Police Station Vigilance Bureau, Ferozepur whereby an application moved by the petitioner for disallowing the examination of one Dalbir Singh Mann was rejected.

Counsel for the petitioner has argued that on 20.02.2018 an application under Section 311 Cr.P.C. moved by the prosecution for examining certain witnesses was allowed vide order Annexure P-2 but the condition which was imposed by the Court was that the prosecution would get only three effective opportunities to examine those witnesses. As per the counsel, the prosecution did not examine those witnesses even after 7 or 8 opportunities. On 17.10.2018, out of the summoned witnesses, one

witness Dalbir Singh Mann was present and he was examined by the prosecution and when the counsel for the petitioner was asked to cross-examine him, he moved an application praying that the testimony of that witness be disallowed since it was against the mandatory condition of three effective opportunities which was imposed vide order dated 20.02.2018. However, that application was illegally dismissed. Counsel for the petitioner has accepted that after dismissal of the application, he had in fact cross-examined that witness.

In the circumstances, the situation before this Court is that though it could have been said that the witness Dalbir Singh Mann should not have been examined because the condition of three effective opportunities has been breached yet for one reason or the other he was also cross-examined by the counsel for the petitioner. It is against this backdrop of fact that I have to decide whether to disallow the evidence of that witness or to permit it to go through. In my considered opinion, this petition has to fail. It was open to the counsel for the petitioner to have refused to cross-examine Dalbir Singh Mann and moved the present petition immediately thereafter. He, however, went ahead and cross-examined Dalbir Singh Mann and thereafter the trial has progressed further also. In these circumstances, I do not deem it appropriate to interfere.

Petition is dismissed.

Since the main case has been decided, the pending criminal miscellaneous application, if any, also stands disposed of.

February 11, 2019
ashish

(AJAY TEWARI)
JUDGE

Whether speaking/reasoned	-	Yes/No
Whether reportable	-	Yes/No