

CRM-M-35684-2017

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

CRM-M-35684-2017

Date of Decision:22.04.2019

Manjit Singh

... Petitioner

Versus

State of Punjab

... Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Himanshu Puri, Advocate,
for the petitioner.

Mr. Dhruv Dayal, Sr. DAG, Punjab.

INDERJIT SINGH, J.

Petitioner has filed this petition under Section 482 Cr.P.C. for setting aside the order dated 09.08.2017 passed by learned Additional Chief Judicial Magistrate, Kapurthala, whereby application filed by the prosecution under Section 311 Cr.P.C. has been allowed.

Notice of motion was issued. Learned State counsel put in appearance on behalf of the respondent-State and contested the instant petition.

From the record, I find that during the pendency of trial, an application under Section 311 Cr.P.C. was filed by the prosecution to summon complainant-Inderjit Singh and Kashmir Singh for re-examining. It is stated in the application that on 22.08.2016, the prosecution examined complainant-Inderjit Singh as PW 1 and his cross-examination was done on

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05.11.2016. The cross-examination of Kashmir Singh was done on 12.09.2016. During the cross-examination, the said witnesses disclosed that they did not know accused-Manjit Singh present in the Court. The said witnesses have resiled from their previous statements given by them in their examination-in-chief as well as under Section 161 Cr.P.C. given to the police. The said witnesses are very material but inadvertently, the prosecution could not cross-examine them. In the end, it is prayed that the said witnesses may be summoned and an opportunity may be given to the prosecution to re-examine them. The said application under Section 311 Cr.P.C. was allowed by learned Additional Chief Judicial Magistrate, Kapurthala, vide impugned order dated 09.08.2017.

Feeling aggrieved from the impugned order, the present petition has been filed.

I have heard learned counsel for the petitioner as well as learned State counsel and gone through the record.

Perusal of record shows that both these prosecution witnesses have been examined by the prosecution and they have not been declared got hostile in their examination-in-chief, rather they have supported the prosecution version in their examination-in-chief. They were cross-examined by counsel for the accused in which they stated that they did not know the accused present in the Court and never made any complaint against him before the police. Even in their cross-examinations, these witnesses have not been got declared hostile by the prosecution. No request was made to get them declared hostile and cross-examined. Even the witnesses were not re-examined by the prosecution.

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Therefore, in the facts and circumstances of the present case, since these witnesses supported the prosecution version during their examination-in-chief and have not been got declared hostile by the prosecution even during their cross-examinations, then the prosecution cannot cross-examine them. As regarding the statements during examination-in-chief and cross-examination, it is for the trial Court to believe or disbelieve the same. It is open for the court to believe the statement given in the examination-in-chief or cross-examination after appreciating the evidence. Since the witnesses have supported the prosecution version in their examination-in-chief and have not been declared hostile, therefore, the prosecution has no right to cross-examine them.

As a result of above discussion, I find that the impugned order dated 09.08.2017 passed by learned Additional Chief Judicial Magistrate, Kapurthala, is not as per law. Resultantly, the present petition is allowed; the impugned order dated 09.08.2017 is set aside and the application under Section 311 Cr.P.C. filed by the prosecution is dismissed.

22.04.2019

parveen kumar

**(INDERJIT SINGH)
JUDGE**

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