

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

**Crl. Misc. No.M- 43692 of 2018 (O&M)
Date of Decision: September 04, 2019**

Ajay Mehra

.....PETITIONER

VERSUS

Surinder Singh

.....RESPONDENT

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Akhilesh Vyas Advocate
for the petitioner.

Mr. Umesh Aggarwal, Advocate
for the respondent.

SURINDER GUPTA, J.(Oral)

Heard.

The complainant filed application under Section 311 Cr.P.C. for recalling of witnesses DW-2 Rahul Verma, DW-3 Anand Kumar, DW-4 Dinesh Kumar and DW-5 Gurwinder Singh for their cross-examination with the plea that his earlier counsel had not cross-examined these witnesses.

Vide order dated 16.08.2018, learned trial Court allowed the application with the observations in para 5 as follows:

“----- This Court is of the considered view that the opportunity to cross-examine the above defence witnesses should be given to complainant as it will facilitate this Court to decide the case on merits. Therefore, the application in hand is allowed. But as the complainant has moved this application at later stage, therefore, justice demands that he should be burdened with costs of Rs. 5000/-, which shall be paid to the accused. Therefore, keeping in view the facts and

circumstances, the application moved by complainant under Section 311 Cr.P.C. is allowed subject to costs of Rs. 5000/-.”

Learned counsel for the petitioner while drawing my attention to the observations of the Hon'ble Apex Court in the cases of ***State of Haryana Versus Ram Mehar and others, 2016(4) PLR 824, AG Versus Shiv Kumar Yadav and another, 2015(8) JT 224*** and of co-ordinate Bench of this Court in case of ***Rama Exports India and another Versus Anuj Khullar, 2013(4) R.C.R. Criminal 737***, has argued that the respondent has tried to fill up lacuna and mere change of counsel is no ground to recall the witnesses. He has further argued that the witnesses sought to be recalled were not examined on one date rather they were examined on different dates and no reason has been given in the application for avoiding to cross-examine them.

Learned counsel for the respondent has argued that the petitioner was earlier represented by a counsel, who went abroad and did not cross-examine the witnesses examined in defence. These are official witnesses and permission has been sought to cross-examine them just to extract information with regard to the documents produced on record.

Rebutting the submission of learned counsel for the respondent, learned counsel for the petitioner submits the fact that counsel for the complainant had gone abroad nowhere find mention in the application filed by petitioner under Section 311 Cr.P.C.

In the case of ***State of Haryana versus Ram Mehar (Supra)***, the Hon'ble Apex Court has categorically observed that the trial Court under Section 311 Cr.P.C. has wide discretionary power to allow recalling of witness provided it is satisfied that their cross-examination is essential.

Admittedly, in this case, the witnesses sought to be cross-examined are official witnesses, who have produced certain documents and in the event of their cross-examination being allowed, the petitioner will not suffer any prejudice. It is not a case where the witnesses have been duly cross-examined and are sought to be recalled to fill up the lacuna in the cross-examination.

Learned trial Court has found the cross-examination of these witnesses as essential with the observations that it is required to decide the case on merits. Even if there is lapse on the part of counsel for the complainant in not cross-examining the above mentioned witnesses, the complainant cannot be made to suffer for that lapse. It is not a case where the complainant is seeking permission under Section 311 Cr.P.C. only because of change of counsel. The fact is that statements of certain witnesses has gone unrebutted because of the lapse on the part of counsel for the complainant in not cross-examining them. While allowing the application, learned trial Court has also imposed the costs of ₹5,000/- on the complainant to compensate the petitioner.

Keeping in view the above facts, ratio of judgments referred by learned counsel for the petitioner is not helpful to advance his submissions. This petition has no merits.

Dismissed.

(SURINDER GUPTA)
JUDGE

September 04, 2019
Jyoti-II

Whether speaking/reasoned:
Whether Reportable:

Yes/No
Yes/No