

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CRM-M-9298-2018 (O&M)
Date of decision : May 02, 2019

NIRMAL SINGH

.....Petitioner

Versus

STATE OF PUNJAB

...Respondent

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: Mr.Deepak Goyal, Advocate
for the petitioner.

Mr. Sidhakmeet Sandhu, AAG, Punjab.

ARVIND SINGH SANGWAN, J (ORAL)

The petitioner has preferred the instant quashing petition under Section 482 Cr.P.C., against the orders dated 05.02.2018 passed by Additional District Judge, Sangrur (Annexure P-4) whereby the application (Annexure P-2) under Section 311 Cr.P.C. filed by the petitioner has been dismissed in case FIR No.235 dated 03.07.2016, registered under Sections 379, 379-B, 411 and 34 IPC at Police Station City Sangrur (Annexure P-1).

On 06.03.2018, the following order was passed and the operative part is reproduced as under:-

“.....Prayer in this petition is for setting-aside the order dated 05.02.2018 (Annexure P4) vide which the application filed by the petitioner/accused under Section 311 Cr.P.C. for re-examining the two prosecution witnesses i.e. PW1 ASI Malkiat Singh and PW2 HC Gurcharan Singh was declined by the trial Court.

Counsel for the petitioner has submitted that on 10.01.2017, when both the aforesaid witnesses appeared before

the trial Court for the purpose of cross-examination, they could not be cross-examined and the trial Court recorded “Opportunity given. NIL.” Counsel for the petitioner has further submitted that PW1 – ASI Malkiat Singh, the Investigating Officer as well as PW2 – HC Gurcharan Singh, the recovery witness, needs to be cross-examined by the petitioner/accused for putting up his defence. It is further submitted that the trial Court has dismissed the application only on the premise that it has been filed at belated stage and it has not been mentioned in the application that what specific questions remained to be put to PW1 and PW2. Counsel for the petitioner has further argued that, in fact, it is a case where no cross-examination has been conducted on these two witnesses and this aspect of the case has not been properly appreciated by the trial Court”.

The counsel for the petitioner submits that the petitioner-Nirmal Singh was regularly appearing before the trial Court and the prosecution has taken number of dates for recording the statement of the prosecution-evidence starting from 05.12.2016. He further relied upon the interim orders passed by the trial Court showing that on number of dates no prosecution-witness was present and on some occasions the trial Court has even issuedailable warrants against the prosecution witnesses to procure their presence.

A perusal of the interim orders also shows that on one occasion, the Court was on leave and the case was taken up by the another Presiding Officer. On 24.07.2017 none of the prosecution-witnesses were present, however PW-Rhythm Pahuja was examined and on the next date againailable warrants were issued for the remaining PWs. On 29.08.2017 one PW was again examined and PWs mentioned at Sr. No. 5 and 9 in the list of

witnesses were summoned again.

In the meantime the petitioners on conclusion of the evidence moved an application under Section 311 Cr.P.C. with the prayer that inadvertently two of the prosecution-witnesses have not been examined by the accused persons and prays that one opportunity be granted to cross-examine them. The trial Court vide impugned order dated 05.02.2018 has dismissed the application. This petition is filed challenging the said order.

As noticed above the counsel for the petitioner has submitted that both the PW1-Nirmal Singh ASI and PW2- HC Gurcharan Singh have appeared for the first time on 05.12.2016 when their cross-examination was deferred and when they again appeared on the subsequent date the defence counsel failed to cross-examine them.

Though, it is apparent that the trial Court has granted adequate opportunities to the petitioners to cross-examine the aforesaid witnesses however considering the fact that on account of the fact that the defence counsel was taking dates and the trial Court ultimately treated the cross-examination as NIL, the trial Court has taken a very harsh view for not granting one opportunity to the petitioner/accused to cross-examine the witnesses-PW1 and PW2. The view taken by the trial Court that since the prosecution-evidence has been closed and the application has been moved at the later stage, cannot be taken as a ground to debar the petitioner-Nirmal Singh to examine prosecution-witnesses as it is an important right of the accused to cross-examine the prosecution-witnesses and put up their defence to prove their innocence.

The learned State counsel however on the other hand on

instructions from ASI-Jaggir Singh opposed the prayer on the ground that despite availability of the two prosecution-witnesses, the counsel for the accused/petitioner failed to cross-examine them and therefore the trial Court is justifying in dismissing the application under Section 311 Cr.P.C.

After hearing learned counsel for the parties I find merit in the present petition as it is a well settled principle of law that while deciding an application under Section 311 Cr.P.C., the Court has vide power to allow such application in the interest of justice and to grant a fair opportunity of trial to the accused persons.

Accordingly this petition is allowed and the impugned order dated 05.02.2018 is set aside. The trial Court is directed to afford one factual opportunity to the petitioner to cross-examine both the witnesses, however this will be subject to payment of cost of ₹10,000/- to be deposited with the District Legal Services Authority, Sangrur on account of delay in proceedings of the case.

The parties are directed to appear before the trial Court on 28.05.2019 and on that day the trial Court will fix a date for the cross-examination of the two witnesses.

The petition stands disposed of accordingly.

(ARVIND SINGH SANGWAN)
JUDGE

02.05.2019

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Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No