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

**CRR No.280 of 2020 (O&M)
Date of Decision: 28.01.2020**

BAGGA SINGH

.....Petitioner

Vs

STATE OF HARYANA

....Respondent

CORAM: *HON'BLE MR. JUSTICE RAJ MOHAN SINGH*

Present: Mr. Gautam Kumar, Advocate
for the petitioner.

RAJ MOHAN SINGH, J. (Oral)

[1]. Petitioner has preferred this revision petition against the order dated 15.01.2020 passed by the Addl. Sessions Judge, Kurukshetra declining the prayer for summoning of the witnesses in defence.

[2]. Learned counsel for the petitioner submitted that the petitioner is an accused in FIR No.22 dated 11.01.2018 registered under Section 21 of the NDPS Act at Police Station Pehowa, District Kurukshetra. His statement under Section 313 Cr.P.C. was recorded on 21.08.2019. Thereafter, defence evidence started. Though the petitioner has already cross-examined the Investigating Officers namely Surender Pal as PW-5 and Surinder Kumar as PW-6, but the question regarding

competence of the aforesaid Investigating Officers to investigate the offence being not of designated rank could not be put to the witnesses. The aforesaid information needs to be extracted as the same would go to the very roots of the case. Criminal case has to be decided by proving guilt of the accused beyond all reasonable doubts. Evidence of the accused i.e. defence evidence has not been closed so far.

[3]. Notice of motion.

[4]. On asking of the Court, Mr. Surender Singh, A.A.G., Haryana accepted notice on behalf of the respondent-State.

[5]. In view of nature of order which this Court proposes to pass, there is no necessity of calling upon response from the respondent-State as the same would further delay disposal of the case.

[6]. The procedural law is meant to prevent failure of justice on account of mistake of either of the party to bring on record valuable evidence. It is not only the prerogative of the Court, but also a duty to examine such a witness as it considers necessary for doing justice between the parties. The consideration before the Court is to visualise as a determinative factor that whether the evidence in question is essential for just decision of the case or not? The underlying principles were well defined in **Hanuman**

Ram vs. State of Rajasthan and ors., AIR 2009 SC 69.

[7]. In a criminal trial fair opportunity is required to be given to the accused to prove his innocence. Guilt of the accused has to be proved to the hilt. This is the object of every fair trial. In **Hoffman Andreas vs. Inspect of Customs, Amritsar (2000) 10 SCC 430** the Hon'ble Apex Court emphasized that “the Court could adopt latitude and an liberal view in the interest of justice, particularly when the Court has unbridled powers in the matter as enshrined in Section 311 of the Code. After all the trial is basically for the prisoners and courts should afford the opportunity to them in the fairest manner possible.”

[8]. The prayer of the petitioner is not that which would impede any cause of justice. At the most, truth will come to fore and that would serve as a material ground for prosecution as well as defence in the case.

[9]. In view of aforesaid, this petition is disposed of by granting one opportunity to the petitioner for summoning PW-5 and PW-6 for further cross-examination on a date to be fixed by the trial Court.

[10]. Since the trial has already substantially delayed, therefore, one indulgence is being granted to the petitioner as last opportunity to summon PW-5 and PW-6 for further cross-

examination with the indulgence of the Court. It is made clear that no further opportunity shall be granted after appearance of the said witnesses and cross-examination thereof.

January 28, 2020

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Whether speaking/reasoned

Whether reportable

(RAJ MOHAN SINGH)
JUDGE

Yes/No

Yes/No