

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

**CRR No.562 of 2020
Date of decision:17.03.2020**

Rajwinder Singh @ Raj

... Petitioner

Vs.

State of Punjab

... Respondent

CORAM: HON'BLE MR. JUSTICE SUVIR SEHGAL

Present:- Mr. Deepak Aggarwal, Advocate
for the petitioner.

Mr. V.G.Jauhar, Sr. DAG, Punjab.

SUVIR SEHGAL, J.

The present revision petition has been filed under Section 401 of the Code of Criminal Procedure (hereinafter referred to as “Cr.P.C) for modification of the impugned order dated 10.02.2020 in so far as the application filed by the petitioner-accused under Section 311 Cr.P.C, was partly declined.

Facts in brief leading to filing of the present petition are that FIR No.12 dated 11.01.2018 was registered against the petitioner and another co-accused Amandeep Singh under Sections 22 and 25 of the [Narcotic Drugs and Psychotropic Substances Act, 1985](#) (hereinafter referred as “NDPS Act”) at Police Station Raman, District Bathinda on the allegation that both the accused were travelling on a motorcycle and when confronted by ASI Baltej Singh, they threw away a polythene bag which they were carrying and tried to escape from the spot but they fell down and

were apprehended on the spot. The polythene bag, when checked was found to be containing 20 vials of ONEREX of 100 ml each. After the FSL report, the challan was presented in the Court and charges were framed against both the accused and they were tried for the offences under NDPS Act.

During the course of prosecution evidence, two witnesses namely ASI Baltej Singh and HC Makhan Singh were produced as PW2 and PW4. PW2-ASI Baltej Singh was the Investigating Officer and he was examined by the prosecution on 13.09.2018 (Annexure P-1) and was cross-examined by counsel for the accused. Examination-in-chief of PW-4 Head Constable Makhan Singh, was conducted on 08.05.2019 (Annexure P-2). However, the prosecution evidence was subsequently closed, as a result of which, PW-4 could not be cross-examined. The statement of the defence under Section 313 Cr.P.C was recorded on 19.09.2019 and defence evidence started on 21.09.2019. Two separate applications were moved under Section 311 Cr.P.C, the first application was moved by the prosecution on 04.02.2020 (Annexure P-3) for recalling PW-4 HC Makhan Singh for his cross-examination. The second application, (Annexure P-4) under Section 311 Cr.P.C was submitted by the accused to the effect that due to ill-health, counsel for the accused could not properly cross-examine PW2 ASI Baltej Singh, as a result of which some important questions such as whether the IO is ORP and questions regarding mandatory provisions of NDPS Act, could not be put to the said witness. The other prayer by the accused was that PW4 Makhan Singh-HC be recalled for his cross-

examination.

Replies to both the applications were filed by the accused and the prosecution. After hearing, the Additional Sessions Judge, Bathinda, vide impugned order dated 10.02.2020 allowed the application filed by the prosecution and held that the cross-examination of Head Constable Makhan Singh was necessary for the proper adjudication of the matter. On the other hand, in so far as the application of the accused was concerned, the Court found that full opportunity has been given to the accused to cross-examine PW-2 ASI Baltej Singh and recalling him for cross-examination was not tenable.

Counsel for the parties have been heard and the paper book has been perused with their able assistance.

Counsel for the petitioner has relied upon a judgment of the Hon'ble Supreme Court in **Rajaram Prasad Yadav Vs. State of Bihar and another 2013(3) RCR (Criminal) 726** and judgment of Co-ordinate Bench of this Court in **Mohan Lal Vs. State of Haryana 2000(1) CLJ 370** to contend that no party in a trial can be foreclosed from correcting errors and if proper evidence was not adduced or a relevant material was not brought on record due to any inadvertence, the Court should be magnanimous in permitting such mistakes to be rectified.

The judgment passed in **Rajaram Prasad Yadav (supra)** was considered by the Supreme Court in a subsequent judgment rendered in **State of Haryana Vs. Ram Mehar and others 2016 (4) RCR (Criminal)**

154 and after noticing **Rajaram Prasad Yadav** and number of other judgments, the Hon'ble Supreme Court in para 37, held as under:-

“37. There is a definite purpose in referring to the aforesaid authorities. We are absolutely conscious about the factual matrix in the said cases. The observations were made in the context where examination-in- chief was deferred for quite a long time and the procrastination ruled as the Monarch. Our reference to the said authorities should not be construed to mean that [Section 311 Cr.P.C](#) should not be allowed to have its full play. But, a prominent one, the courts cannot ignore the factual score. Recalling of witnesses as envisaged under the said statutory provision on the grounds that accused persons are in custody, the prosecution was allowed to recall some of its witnesses earlier, the counsel was ill and magnanimity commands fairness should be shown, we are inclined to think, are not acceptable in the obtaining factual matrix. The decisions which have used the words that the court should be magnanimous, needless to give special emphasis, did not mean to convey individual generosity or magnanimity which is founded on any kind of fanciful notion. It has to be applied on the basis of judicially established and accepted principles. The approach may be liberal but that does not necessarily mean “the liberal approach” shall be the rule and all other

parameters shall become exceptions. Recall of some witnesses by the prosecution at one point of time, can never be ground to entertain a petition by the defence though no acceptable ground is made out. It is not an arithmetical distribution. This kind of reasoning can be dangerous. In the case at hand, the prosecution had examined all the witnesses. The statements of all the accused persons, that is 148 in number, had been recorded under [Section 313](#) Cr.P.C. The defence had examined 15 witnesses. The foundation for recall, as is evincible from the applications filed, does not even remotely make out a case that such recalling is necessary for just decision of the case or to arrive at the truth. The singular ground which prominently comes to surface is that the earlier counsel who was engaged by the defence had not put some questions and failed to put some questions and give certain suggestions. It has come on record that number of lawyers were engaged by the defence. The accused persons had engaged counsel of their choice. In such a situation recalling of witnesses indubitably cannot form the foundation. If it is accepted as a ground, there would be possibility of a retrial. There may be an occasion when such a ground may weigh with the court, but definitely the instant case does not arouse the judicial conscience within the established norms of [Section 311](#) Cr.P.C. for exercise of such jurisdiction.

It is noticeable that the High Court has been persuaded by the submission that recalling of witnesses and their cross-examination would not take much time and that apart, the cross-examination could be restricted to certain aspects. In this regard, we are obliged to observe that the High Court has failed to appreciate that the witnesses have been sought to be recalled for further cross-examination to elicit certain facts for establishing certain discrepancies; and also to be given certain suggestions. We are disposed to think that this kind of plea in a case of this nature and at this stage could not have been allowed to be entertained.”

When the facts of the present case are examined, in the light of the above observations of the Hon'ble Supreme Court, it is clear that application under Section 311 Cr.PC filed by the petitioner accused was rightly dismissed by the Additional Sessions Judge. Extensive cross-examination of PW2 Baltej Singh was concluded on 13.09.2018, thereafter, the prosecution produced other witnesses in support of his case and eventually, the prosecution evidence was closed on 13.09.2019 i.e. one year later. The accused had enough opportunity to file an application for recalling of ASI Baltej Singh, PW2 for cross-examination till then. However, no reason has been given as to why the application was not moved when the prosecution evidence was going on except for mentioning that counsel was un-well. No certificate of medical practitioner has been

attached to support this fact. Moreover, from the exhaustive cross-examination, it is apparent that the said witness has been questioned, in detail, on the vital aspects of the case by the counsel for the accused-petitioner.

Still further, an application had also been filed on behalf of the accused for summoning defence witnesses i.e. MHC Police Station Raman alongwith register No.19 of the case as well as DDR for the period from 11.01.2018 to 15.01.2018 and also for summoning the concerned Clerk of SSP office Bathinda alongwith complete service record of ASI Baltej Singh. Both these witnesses appeared before the Court with the relevant record but they were given up by the defence counsel. HC Gurpreet Singh, CRC Branch, SSP Office, Bathinda, had brought the service record of ASI Baltej Singh but the said witness was not examined, though from his examination it could have been ascertained as to whether the Investigating Officer was ad hoc or regular on the date of registration of the FIR.

Merely because the prosecution had filed an application for cross-examination of PW-4 HC Makhan Singh whose cross-examination could not be conducted because the prosecution evidence was inadvertently closed, does not give the accused a right to file an application and claim parity with the prosecution.

It is pertinent to notice that the application under Section 311 Cr.P.C had been filed by the accused petitioner in February 2020, after substantial defence evidence had been led. This Court in **CRM-M-27909 of**

2019 titled as Amandeep Singh Vs. State of Punjab, decided on 21.11.2019, which was a second petition for grant of regular bail filed by the co-accused, directed the Special Court, Bathinda to conclude the trial within a period of three months. When the trial was at its fag end, the present application was moved by the accused petitioner. On a reference made by the Special Court, Bathinda, this Court in CRM-8558 of 2020 in CRM-M-27909 of 2019 titled as Amandeep Singh Vs. State of Punjab, on 05.03.2020 extended the time by two months.

From the above, it is further more clear that the intention of the accused was to delay the trial. When the three months time granted by this Court on 21.11.2019, was almost coming to an end, the application under Section 311 Cr.P.C was filed with the intention to drag the trial. For this reason again, no interference is called for in the impugned order dated 10.02.2020 passed by the Additional Sessions Judge, Bathinda.

The revision petition is accordingly, dismissed with no order as to costs.

(SUVIR SEHGAL)
JUDGE

March 17, 2020
savita

Whether Speaking/Reasoned	Yes
Whether Reportable	Yes