

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

CRM-M-23239-2017

Date of decision: March 03, 2020

Ajay @ Pinku and others

....Petitioners

Versus

State of Haryana and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: Mr. Bikram Chaudhary, Advocate
 for the petitioners.

Mr. Deepak Grewal, DAG, Haryana.

ARVIND SINGH SANGWAN, J. (Oral)

Prayer in this petition is for setting aside the order dated 22.5.2017 passed by the trial Court vide which an application filed by the appellant-accused-Ajay @ Pinku under Section 311 of the Code of Criminal Procedure (for short 'Cr.P.C') to further cross-examine PW6-Surrender-complainant was dismissed by the trial Court.

Counsel for the petitioners submits that after recording of this witness, some other witnesses have not supported the prosecution version and they have been declared hostile and one of the question relating to the weapon of offence could not be put to this witness.

A perusal of the impugned order shows that the statement of PW6 was recorded on 7.10.2016, whereas this application for recalling this witness for further cross-examination was filed on 17.4.2016, i.e. after a gap of about 06 months and primarily with an intention that since the other witnesses have not supported the prosecution version, the petitioner-accused may put certain questions to this witness with regard to the statement of the other witnesses.

The trial Court has also recorded the findings that the application has been filed just to delay the trial and in view of the judgment of the Hon'ble Supreme Court passed in *Mishri Lal and others Vs. Stae of M.P., 2005 AIR (SCW) 2770*, it is held that once a witness is examined, the Court should not allow re-examination of this witness in a casual manner. Similar view has been taken by the Hon'ble Supreme Court in *2015 AIR (SCW) 5302, AG Vs. Shiv Kumar Yadav and another*, while issuing certain guidelines, it has been held that mere change of counsel is not a ground to recall the witness and unless and until it appears to the Court that re-examination of a witness is essential for the just decision of the case, such witness should not be examined.

It is further held that the exercise of power under Section 311 Cr.P.C. cannot be invoked for filling up of a lacuna in the prosecution evidence unless and until the Court is satisfied that some serious prejudice is caused to the accused resulting in miscarriage of justice.

Learned State counsel has opposed the prayer on the ground that sufficient opportunities were granted to the petitioners to cross-examine this witness and in the application filed before the trial Court, no reasons are assigned as for what purpose this witness is required for re-examination.

After hearing counsel for the parties, I find no ground for interference in the findings recorded by the trial Court.

This petition is, accordingly, dismissed.

(ARVIND SINGH SANGWAN)
JUDGE

March 03, 2020
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Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No