

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

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CRM-M-31036-2021 (O&M)

Date of Decision: 05.08.2021

RAM KISHAN

... Petitioner

Versus

STATE OF HARYANA AND OTHERS

... Respondents

CORAM: HON'BLE MR. JUSTICE HARNARESH SINGH GILL

Present: Mr. Parveen Sharma, Advocate
for the petitioner.

HARNARESH SINGH GILL, J.(Oral)

Case is taken up for hearing through video conferencing.

Through this petition, the petitioner seeks setting aside of the order dated 16.07.2021 (Annexure P-7) passed by learned Additional Sessions Judge, Sonapat, in FIR No.153 dated 15.04.2019, registered at Police Station Ganaur, District Sonipat, under Section 20 of the NDPS Act, vide which the application filed under Section 311 Cr.P.C. for summoning PW-3 and PW-6, for their cross-examination, was dismissed.

Learned counsel for the petitioner submits that on 07.02.2020, examination-in-chief of PW3, namely, ESI Vijay Kumar, was recorded but due to ill-health of the counsel, his cross-examination was deferred and the matter was adjourned to 10.02.2020. On 10.02.2020, apart from PW-3, two more witnesses i.e. PW-5, namely, ASI Kuldeep Singh and PW-6, namely, Azad Singh, were also present and their examination-in-chief were recorded. Cross-examination of PW-5 was concluded. However, owing to his appearance before the other Courts, the counsel before the trial court could not conduct

cross-examination of PW-3 and PW-6. Resultantly, the trial Court, without considering that the counsel was busy before some other Court, has recorded '*nil opportunity given*'. Thereafter, on the same day i.e. 10.02.2020, the counsel before the trial Court moved an application under Section 311 Cr.P.C. for summoning PW-3 and PW-6 for their cross-examination, which was declined by the learned Additional Sessions Judge, Sonapat, on 16.07.2021, holding that 'opportunity was given to cross-examine PW-3 and PW-6 on 10.02.2020 but when no questions were asked, cross-examination of these witnesses was recorded as nil opportunity given'.

Notice of motion to respondent No.1 only at this stage.

On the asking of this Court, Mr. Ashok Singh Chaudhary, Addl. A.G. Haryana, accepts notice on behalf of respondent No.1-State only.

Notice is not being issued to respondents No.2 and 3 as such process would unnecessarily delay the proceedings before the trial Court.

I have heard learned counsel for the parties.

Without going into the merits of the case and in order to meet the ends of justice, this Court deems it appropriate to grant one more opportunity to the petitioner to cross-examine PW-3 and PW-6.

Keeping in view the above, the present petition is allowed and the impugned order dated 16.07.2021 (Annexure P-7) passed by learned Additional Sessions Judge, Sonapat, is set aside. The application moved by the petitioner under Section 311 Cr.P.C. is allowed and one more opportunity is granted to the petitioner to cross-examine PW-3, namely, ESI Vijay Kumar and PW-6, namely, Azad Singh, subject to costs Rs.10,000/-, to be paid to the said witnesses in

equal proportion i.e. Rs.5,000/- each.

The trial Court is directed to re-summon PW-3 and PW-6 for their cross-examination, at its convenience.

05.08.2021

Aman Jain

Whether speaking/reasoned
Whether reportable

(HARNARESH SINGH GILL)

JUDGE

: Yes/No
: Yes/No