

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

SR. No.105

CRR-1736-2021

Date of Decision:20.12.2021

Gobind Singh

...Petitioner

Versus

State of Punjab

...Respondents

CORAM: HON'BLE MR. JUSTICE SANT PARKASH

Present: Mr. Harsh Bunker, Advocate,
for the petitioner.

SANT PARKASH, J.

By way of filing the present criminal revision petition, petitioner, *inter alia*, prays for quashing/setting aside of the impugned order dated 25.10.2021, whereby the application filed under Section 311 Cr.P.C. was dismissed by the Judicial Magistrate 1st Class, Jalandhar.

Briefly stated, the case of the petitioner, as unfolded, is that he was charge sheeted vide order dated 15.09.2017 in the instant FIR No.57 dated 18.05.2017 under Sections 448/380/201/506 IPC registered at Police Station Bhogpur, District Jalandhar. During the course of the trial, the prosecution evidence was closed by court on 21.11.2019 by passing the following order:-

“PW-6 Gurwinder Singh Patwari come present and examined. Today the case was fixed for prosecution evidence subject to last opportunity, but no PW is present. Perusal of file reveals that charge in this case was framed on 15.09.2017 and thereafter prosecution availed 26 effective opportunities for concluding its evidence. The summon and bailable warrants to the witnesses were sent for prosecution to conclude its evidence, but he has failed to conclude his evidence. Today

again counsel for prosecution prayed for adjournment. I find no justification in giving any further opportunity for prosecution evidence, therefore prosecution evidence is closed by order. Now to come up on 23.11.2019 for recording the statement of accused under Section 313 Cr.P.C.”

Thereafter, an application under Section 311 Cr.P.C. was filed for summoning of these two witnesses for the purpose of cross-examination, which has been dismissed vide impugned order dated 25.10.2021, now under challenge before this Court.

It is pertinent to mention here that the main ground of dismissal of the application under Section 311 Cr.P.C. was that the petitioner would have challenged the order dated 21.11.2019, closing the prosecution evidence by the Court, but instead thereof, he moved an application purposely with a view to delay the proceedings.

The main grouse of the petitioner is that PW-1 and PW-2, whose examination-in-chief was recorded on 29.11.2017, were not allowed to be cross-examined. In the petition itself, various zimni orders have been reproduced and from all the zimni orders, an irresistible and unerring conclusion can be drawn that on account of non-examination of the said material witnesses, a serious prejudice would be caused to the petitioner. Both the witnesses are material witnesses and have spoken in tune with the case of the prosecution in their examination-in-chief.

Notice of motion.

On the asking of Court, Mr. Tanvir Joshi, AAG, Punjab, accepts notice.

It is stated that now the case before the court below is fixed for

14.01.2022 for defence evidence, if any, and arguments.

In the interest of justice and finding that a serious prejudice would be caused to the petitioner-accused if he is not allowed to conduct the cross-examination of these two material witnesses, this criminal revision petition is allowed. The impugned order dated 25.10.2021 is, hereby, set aside. The learned trial Court is directed to allow the petitioner to cross-examine these two material witnesses and for that purpose, the learned trial Court can prepone the case and issue the summons to the aforesaid witnesses for the date already fixed, i.e. 14.01.2022. It is further made clear that only one opportunity will be granted to the petitioner for the said purpose and if it is not done so, the cross-examination on behalf of the petitioner will be treated as nil.

The present petition stands disposed of in the above terms.

20.12.2021
mks

(SANT PARKASH)
JUDGE