

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

CRM-M-15832-2018

Date of decision : 24.05.2022

Manjit Kaur

...Petitioner

Vs.

State of Punjab

...Respondent

CORAM:- HON'BLE MR. JUSTICE MANOJ BAJAJ

Present: Mr. Sanjiv Kumar Yadav, Advocate and
Mr. Rakesh Gupta, Advocate for the petitioner.
Mr. Kirat Singh Sidhu, DAG, Punjab.

MANOJ BAJAJ, J.

Manjit Kaur-accused has preferred this petition under Section 482 Cr.P.C to challenge the order dated 21.02.2018 (Annexure P-6) passed by revisional Court, whereby the order dated 15.12.2017 (Annexure P-4) passed by Judicial Magistrate First Class, Patiala, dismissing the application dated 14.12.2017 filed under Section 311 Cr.P.C for recalling prosecution witness PW-1, namely, Amritpal Garg for further cross examination was upheld. The impugned orders arise from trial proceedings in case FIR No.149 dated 23.09.2014 registered under Section 406 IPC at Police Station Passiana, District Patiala.

The above FIR was registered on the complaint given by Parminderjit Singh, District Manager, Punjab State Civil Supplies Corporation Limited (PUNSUP), wherein it was alleged that M/s Ghuman Agro Foods Mehmoodpur, District Patiala (through its proprietor-Manjit Kaur) and Punjab State Civil Supplies Corporation Limited (PUNSUP) entered into an agreement

regarding milling of paddy for the year 2013-2014. As per the policy, 24734 paddy bags weighing 8656.9 quintals were allotted to the petitioner along with the receipts of quality and quantity for delivery of 67% of rice i.e. 5800.12 quintals of rice to Food Corporation of India, but she has delivered only 1618.38 quintals of rice and there was shortage of 4181.74 quintals of rice. As per allegations, the said Miller (petitioner) failed to supply the Rice in account of Food Corporation of India, which resulted in loss of approximately Rs.1,07,81,529/-. On these broad allegations, FIR was registered.

Upon registration of case, the investigation was conducted and after it's completion, final report under Section 173 Cr. P.C was filed on 27.07.2015. After framing of charges on 06.10.2015, the trial progressed against the accused/petitioner and prosecution examined complainant-Amritpal Garg as PW-1. The deposition of the complainant is appended with the petition as Annexure P-2.

During the trial proceedings, the accused/petitioner filed her application dated 14.12.2017 with a prayer for recalling the complainant PW-1, namely, Amritpal Garg for the purpose of further cross examination on certain issues, but the said prayer was opposed on behalf of the complainant. The trial Court after considering the grounds raised in the application as well as the arguments on behalf of the learned counsel for the parties proceeded to dismiss the application through impugned order dated 15.12.2017 (Anexure P-4).

Aggrieved against the order dated 15.12.2017, the petitioner preferred criminal revision before Additional Sessions Judge, Patiala and the same was also dismissed. Hence, this petition.

Learned counsel for the petitioner has argued that though the complainant was cross-examined by the defence counsel on 07.12.2016, but then the defence counsel failed to put material questions to the witness, therefore, the recalling of the prosecution witness, Amritpal Garg, for further cross examination is necessary. He submits that the trial Court committed a serious wrong in rejecting the application and the revisional Court also failed to exercise the jurisdiction by dismissing the revision petition through decision dated 21.02.2018.

During the course of hearing, it is not disputed by learned counsel that the application under Section 311 Cr.P.C was filed after engaging new defence counsel on behalf of accused/petitioner.

After hearing learned counsel for the petitioner, this Court finds that the ground raised by the petitioner for recalling the witness is without any merit and the trial Court has rightly declined to exercise the jurisdiction under Section 311 Cr.P.C. The issue raised in this petition has already been dealt by this Court in CRM-M-14140-2022, titled “**Baljinder Singh @ Gogi Vs. State of Punjab**” and the relevant observations read as under:-

“The cross-examination of a witness of an adverse party or a hostile witness is an art and every lawyer as an individual, may have different ways of grilling the witness in order to test the truthfulness and credibility of such deposition recorded during examination-in-chief, so, there cannot be a stereo typed questionnaire to be used by lawyer during cross-examination, as much would also depend upon the answers of the witness. Of-course the cross-examination may appear like a battle between un-equals, where a rustic witness is cross-examined by a lawyer, but the ground that the previous defence lawyer was not skillful or the new lawyer is more refined is not worth acceptance, particularly when there is no suggestion that the previous defence lawyer did not pursue the interest of accused

honestly. If, such a ground is accepted for exercise of power under Section 311 Cr.P.C this would not only add delay in conclusion of trial proceedings, but would also put extra burden upon the trial Judge to evaluate the multiple depositions of a witness. Also, the trial Courts have to be very careful while dealing with such type of prayers, and must bear in mind that many a times it has been noticed that the recalled witness retracts from the testimony recorded earlier and it results in damage to the prosecution case.

*The decision in **P.Sanjeeva Rao Vs. State of A.P.** (supra) relied upon by the learned counsel is distinguishable on facts, as in the said case, prosecution witnesses sought to be recalled, were never cross-examined and as per ground raised by the accused therein, in fact the defence lawyer had reserved his right to cross-examine those witnesses, after examination of some other witness, but inadvertently, the trial Court recorded their cross-examination as 'nil' and hon'ble Supreme court accepted the omission as a mistake and allowed the request. But in the present case, PW-2-Jaspal Singh was subjected to lengthy cross-examination, by all the defence counsels, therefore, this judgment does not lend any strength to the case of the petitioner and acceptance of the application would amount to fresh cross examination of witnesses.”*

Apart from the above, a perusal of the impugned orders passed by trial Court as well as revisional Court reveal that the same are based upon proper appreciation of material on record, background of the case as well as law on the subject and these orders do not suffer from illegality, therefore, no case is made out for interference by way of invoking inherent powers under Section 482 Cr.P.C.

Resultantly, petition fails and is dismissed.

(MANOJ BAJAJ)
JUDGE

24.05.2022

vanita

Whether speaking/reasoned :
Whether Reportable :

Yes	No
Yes	No