

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

CRM-M-20880-2019

Date of Decision: 16.08.2022

Lakhbir Singh

....Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE HARNARESH SINGH GILL

Present: Mr. Ritesh Pandey, Advocate, for the petitioner.

HARNARESH SINGH GILL, J.

By way of the present petition, the petitioner seeks quashing of the order dated 10.06.2015 (Annexure P.2) passed by the Judicial Magistrate, Ist Class, Batala, whereby an application for recalling the two prosecution witnesses, namely, Gurmeet Singh and Sohan Singh, for cross-examination, was dismissed.

Learned counsel for the petitioner submits that the learned trial Court fell in error in dismissing the application moved by the petitioner to cross-examine PWs Gurmeet Singh and Sohan Singh, as no prejudice would have been caused to the prosecution case. It is further submitted that the case is still at the prosecution evidence stage and there was no circumstance or material on record, to establish that the matter was being delayed in any manner, by the petitioner.

Relying upon P. Sanjeeva Rao Vs. State of A.P., 2012(3) RCR (Criminal) 653, it is contended that mistake on the

part of a lawyer in not cross-examining the witness, should be corrected by allowing an opportunity to recall the witness for cross-examination, even if there is delay in moving an application for such recall.

I have heard learned counsel for the petitioner.

The petitioner had availed sufficient opportunities to cross-examine the witnesses. Still further, no justifiable cause has been shown for the absence of the petitioner's counsel before the trial Court. There is no counter to the fact noticed in the impugned order that four witnesses have already been examined. Thus, when large number of witnesses have already been examined, the witnesses cannot be recalled at the mere asking of the petitioner.

The Hon'ble Apex Court in State of Haryana Vs. Ram Mehar and others, 2016(4) RCR (Criminal) 154 has held that when the large number of the witnesses have already been examined, the witnesses cannot be recalled on the ground of change of lawyer.

As would appear from the impugned order, examination-in-chief of PW1 Sohan Singh and PW2 Gurmeet Singh, was conducted on 03.09.2014 and their cross-examination was deferred, due to the non-availability of the counsel for the petitioner. On the adjourned date i.e. 09.09.2014, the petitioner counsel was not present and accordingly, the cross-examination was treated as nil. Still further, the application seeking cross-examination was moved by the petitioner after a delay of nine months. Moreover, as would appear from the order passed by the trial Court, as many

as four witnesses were already examined, when the petitioner had moved the application for recalling the witnesses.

It could not be pointed out that the absence of the lawyer for the petitioner before the trial Court, was for any justified cause. Having availed sufficient opportunities to cross-examine the witnesses, it is not open to the petitioner to seek recalling of the witnesses.

In view of the above, finding no merit in the present petition, the same is hereby dismissed.

16.08.2022
ds

(HARNARESH SINGH GILL)
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No