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

CRM-M-43600-2016

Date of Decision: 15.9.2022

Ram Parkash @ Binder and another

.... Petitioners

Versus

State of Punjab

.... Respondents

CORAM:HON'BLE MR. JUSTICE ASHOK KUMAR VERMA

Present: - Ms.Samarjeet Kaur, Advocate for
Mr.Vipul Dharmani, Advocate for the petitioners

Mr. G.S. Sandhu, Deputy Advocate General, Punjab.

Mr.Davinder Kumar, Advocate for
Mr.Sandeep Jain, Advocate for the complainant

ASHOK KUMAR VERMA, J.

The petitioners have filed this petition under Section 482 of the Cr.P.C. for quashing the impugned order dated 9.11.2016 (Annexure P-4) passed by Addl. Chief Judicial Magistrate, S.B.S.Nagar vide which the application dated 3.11.2016 (Annexure P-3) filed under Section 311 of the Cr.P.C. by the petitioners/accused for recalling PW3-Anil Kumar for his cross-examination has been dismissed in case FIR No.67 dated 11.6.2011 under Sections 419/420/465/467/468/471/120-B of the IPC registered at Police Station City Nawanshahr.

Relying upon the judgments of the Hon'ble Supreme

Court in **Hanuman Ram vs. The State of Rajasthan and Ors,**

2008 (4) R.C.R. (Criminal) 823 and P. Sanjeeva Rao vs. State of A.P., 2012 (3) RLW 2635, learned counsel for the petitioners contends that the trial court wrongly dismissed the application of the petitioners under Section 311 of the Cr.P.C. for recalling PW-3 Anil Kumar son of Om Parkash. He was the material witness. He could not be cross-examined inadvertently when his examination-in-chief was recorded. He further contends that the petitioner did not get any opportunity to cross-examine the above said PW-3 even when the said witness was the material witness. Therefore, it is imperative that the petitioners/accused be given an opportunity to cross-examine the said PW-3 which is necessary for fair trial and also for just adjudication of the present case.

Per contra, learned counsel for the State and the complainant oppose the application of the petitioners on the ground that accused had been granted ample opportunities to cross-examine the said witness. However, the counsel for the accused failed to cross-examine the said witness. They further argue that the application has been filed at a belated stage after a gap of more than 2 ½ years. Hence the present petition deserves to be dismissed.

I have heard learned counsel for the parties and perused the paper-book.

A perusal of the zimni order (Annexure P-2) shows that the examination-in-chief of Anil Kumar was recorded as PW3 on 6.2.2014. On the said date, his cross-examination was deferred at the request of learned defence counsel himself. Subsequently, the

said witness was re-called for cross-examination on 6.3.2014. A perusal of zimni order dated 6.3.2014 passed by the trial court shows that the above said PW-3 was recalled for cross-examination at the request made by Shri K.S. Khalo, Advocate and Sh. H.K.Bhambi, Advocate, but they did not opt to cross-examine the above said PW despite opportunity being given. Consequently, cross-examination of the said witness was ordered to be treated as “NIL- opportunity given”. This clearly shows that the above said PW-3 had to appear before the trial court twice on the request made by the learned defence counsel, but the accused and their counsel failed to cross-examine the said witness despite opportunities being given to them due to obvious reasons. The reliance placed by the learned counsel for the petitioners are on different footings and are not applicable to the peculiar facts and circumstances of the present case.

It is further seen that the accused kept on sleeping over the matter as learned defence counsel did not avail the opportunity to cross-examine the above said PW-3 and it was later on after a gap of more than 2 ½ years, the application for recalling the above said witness was filed on 3.11.2016. No explanation or justification has been given as to why the application for recalling the above said witness was not filed at the earliest stage. There is no dispute about the fact that object of Section 311 of the Cr.P.C. is to make sure that there may not be failure of justice on account of mistake of either party in bringing valuable evidence on record. However, the said object cannot be misused so as to linger on the matter and

such type of dilatory and casual approach adopted by the accused and their counsel cannot be permitted. It is well settled law that a party is supposed to pursue its case with due diligence and a party cannot be allowed to take advantage of his own wrong/negligence. The Hon'ble Supreme Court in **Mangal Singh vs. Kishan Singh, (2009) 17 SCC 303** has held as under:-

“14. ... Any inordinate delay in conclusion of a criminal trial undoubtedly has a highly deleterious effect on the society generally, and particularly on the two sides of the case. But it will be a grave mistake to assume that delay in trial does not cause acute suffering and anguish to the victim of the offence. In many cases the victim may suffer even more than the accused. There is, therefore, no reason to give all the benefits on account of the delay in trial to the accused and to completely deny all justice to the victim of the offence.”

For the reasons recorded above, I find no illegality or perversity in the impugned order dated 9.11.2016 (Annexure P-4) passed by the trial court which calls for no interference by this Court in exercise of its discretionary jurisdiction under Section 482 of the Cr.P.C.

Dismissed.

15.9.2022
MFK.

(ASHOK KUMAR VERMA)
JUDGE

Whether speaking/reasoned
Whether Reportable

Yes/No
Yes/No