

HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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CRM-M-43691-2018

Date of Decision: 12.10.2022

Ajay Mehra

... Petitioner

VS.

Surinder Singh

... Respondent

CORAM: HON'BLE MR.JUSTICE SANDEEP MOUDGIL

Present: Mr. Akhilesh Vyas, Advocate and
Ms. Simran Sharma, Advocate for the petitioner
Mr. Umesh Aggarwal, Advocate for the respondent

Sandeep Moudgil, J. (Oral)

This is a petition under Section 482 Cr.P.C. for setting aside the order dated 16.08.2018 (Annexure P1) passed by JMIC, Amritsar in complaint case No.379/2014 dated 15.01.2014, whereby application under Section 311 CrPC filed by the respondent for recalling of the witnesses has been allowed.

Learned counsel for the petitioner contends that the cross-examination of witnesses DW1 Arshdeep Singh including other witnesses namely, Parvesh Malhi (wrongly mentioned as DW1), DW2 Rahul Verma, DW3 Dinesh Kumar, DW5 Gurwinder Singh was declared as Nil on the various dates of their cross-examination and it was failure on the part of the complainant/respondent to prove their case and as such the application for recalling of the above-said witnesses is in violation of Section 311 CrPC. It is further contended that the respondent should have immediately approached the court once the cross-examination of the witnesses was declared as Nil and the unexplained delay in filing the application itself dents the case of the respondent. Learned counsel for the respondent has argued that the petitioner

was earlier represented by a counsel, who went abroad and did not cross-examine the witnesses examined in defence. These are official witnesses and permission has been sought to cross-examine them just to extract information with regard to the documents produced on record.

Learned counsel for the respondent submits that the trial Court under Section 311 Cr.P.C. has wide discretionary power to allow recalling of witness provided it is satisfied that their cross-examination is essential.

In a similar petition filed by the petitioner in some other case titled as **Ajay Mehra vs. Surinder Singh (Crl.Misc.No.M-43692 of 2018)** decided on 04.09.2019, this Court has observed as follows:-

“Admittedly, in this case, the witnesses sought to be cross examined are official witnesses, who have produced certain documents and in the event of their cross-examination being allowed, the petitioner will not suffer any prejudice. It is not a case where the witnesses have been duly cross-examined and are sought to be recalled to fill up the lacuna in the cross-examination.

Learned trial Court has found the cross-examination of these witnesses as essential with the observations that it is required to decide the case on merits. Even if there is lapse on the part of counsel for the complainant in not cross-examining the above mentioned witnesses, the complainant cannot be made to suffer for that lapse. It is not a case where the complainant is seeking permission under Section 311 Cr.P.C. only because of change of counsel. The fact is that statements of certain witnesses has gone unrebutted because of the lapse on the part of counsel for the complainant in not cross-examining them. While allowing the application, learned trial Court has also

imposed the costs of Rs.5,000/- on the complainant to compensate the petitioner.”

Keeping in view the observations made in CRM-M-43692-2018, as reproduced above, I do not find any merit in this petition and the same is liable to be dismissed because the grounds taken in the present petition is not different from the one taken in Ajay Mehra’s case (supra).

Dismissed.

12.10.2022

V.Vishal

- 1. Whether speaking/reasoned?
- 2. Whether reportable?

(Sandeep Moudgil)
Judge

- Yes/No
- Yes/No