

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

Sr. No.117

CRM-M-44549-2022

Date of decision : 11.10.2022

Ajaib Singh

.....Petitioner(s)

VERSUS

State of Punjab and others

..... Respondent(s)

**CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY**

Present: Mr.Sukhmeet Singh, Advocate for the petitioner

**AMAN CHAUDHARY, J.**

Present petition has been filed under Section 482 of the Code of Criminal Procedure for setting aside the order dated 7.9.2022, Annexure P-5 passed by learned Additional Sessions Judge, Moga, dismissing the revision filed against the order dated 19.5.2022, Annexure P-3 passed by learned Judicial Magistrate, 1<sup>st</sup> Class, Moga in case CHI/72/2018 titled as “State vs. Sukhwinder Singh etc.” in FIR No. 83 dated 7.8.2017, registered under Sections 427, 447, 511, 148, 149 IPC, whereby an application under Section 311 Cr.P.C. filed by the petitioner was dismissed.

Learned counsel for the petitioner submits that an application filed under Section 311 Cr.P.C. for summoning and examining the witness as mentioned in application, Annexure P-2 has been wrongly dismissed by learned trial Court vide order dated 19.5.2022, Annexure P-3. He further submits that non -examination of the said witness will cause an irreparable loss of the petitioner, he therefore, prays that one opportunity be granted to him to produce and prove the sale deed dated 4.1.2013, Annexure P6, by examining the witness as mentioned in the application.

On advance notice, Mr.Manipal Singh Atwal, DAG, Punjab appearing on behalf of the State opposes the petition on the ground that the order dismissing the application, is justified. He while referring to the said order submits that the present application was the 3<sup>rd</sup> successive application filed by the petitioner under Section 311 Cr.P.C., which even otherwise, is not maintainable, as the witnesses sought to be examined, had already been examined and a detailed order dated 2.3.2022 had been passed by learned trial Court dismissing 2<sup>nd</sup> application, which has not been placed on record in this regard. The present application is merely to delay the proceedings and fill up the lacuna.

Heard.

It is apparent from the impugned order that PW5 Nirbhai Singh stepped into the witness box on 8.1.2022 and was cross-examined by the defence counsel on the same day. The trial Court has recorded that emergence of some new facts during cross-examination is not the sufficient ground to recall the witness for further re-examination. It has further been recorded that it is well settled that once the witness cross-examined and discharged, cannot be recalled merely to fill up the lacuna. It is also apparent that earlier also the same application to recall the same very witness was dismissed on 2.3.2022 by passing a detailed order by the learned trial Court, which has not been placed on record before this Court. Moreover, the trial is at the fag end as the evidence of the prosecution having been complete and defence evidence has also been closed. The revisional Court has also dismissed the revision on the ground of non maintainability as the order passed by the learned trial Court being

interlocutory order.

In the case of **Swapan Kumar Chatterjee Vs. Central Bureau of Investigation**, (2019) 14 SCC 328 Hon'ble The Supreme Court has held as under:-

"11. It is well settled that the power conferred under Section 311 should be invoked by the court only to meet the ends of justice. The power is to be exercised only for strong and valid reasons and it should be exercised with great caution and circumspection. The court has vide power under this section to even recall witnesses for re-examination or further examination, necessary in the interest of justice, but the same has to be exercised after taking into consideration the facts and circumstances of each case. The power under this provision shall not be exercised if the court is of the view that the application has been filed as an abuse of the process of law."

The petitioner having been granted and also availed of the due opportunity to cross-examine, cannot for no good reason seek recalling of a witness, who already stands examined. He has also not been able to demonstrate any valid reason before this Court to justify the application made by him. Moreover, the present petition has been filed under the guise of Section 482 Cr.P.C., which is nothing but a second revision, as such amounts to abuse of process of law.

In view of the above, this Court finds no illegality or perversity calling for any intervention in the impugned order, as a sequel thereto, the present petition being bereft of merit is dismissed.

11.10.2022  
gsv

(**AMAN CHAUDHARY**)  
**JUDGE**

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