

In the High Court for the States of Punjab and Haryana
at Chandigarh

CRM-M-49717-2022

Date of Decision: October 28, 2022

Shamsher Singh @ Shera

... *Petitioner*

Versus

State of Punjab

... *Respondent*

CORAM: HON'BLE MR. JUSTICE VIVEK PURI

Present: Mr. Kanwaljeet Singh Brar, Advocate,
for the petitioner.

Vivek Puri, J.

The petitioner has assailed the order dated 13.12.2021 passed by the Court of learned Additional Sessions Judge, Amritsar, vide which the application under Section 311 of the Code of Criminal Procedure (for short 'Code') for recalling PW1 – Dr. Manish Kumar Sori for further cross-examination, has been dismissed.

The petitioner has been arraigned as an accused in the case bearing FIR No. 84, dated 19.05.2017, under Sections 363, 364, 366, 365, 307, 379-B, 506, 34 of the Indian Penal Code and Section 25 of the Arms Act, registered at Police Station Ajnala, District Amritsar Rural. The aforesaid FIR has been registered at the instance of Dr. Manish Kumar Sori leveling allegations of abduction, demand of ransom, etc. During the course of trial, the

statement of Dr. Manish Kumar Sori, complainant, was recorded as PW1 and he was also cross-examined on behalf of the accused by their counsels. The petitioner has moved an application (Annexure P-3) under Section 311 of the Code for recalling PW1 – Dr. Manish Kumar Sori for further cross-examination on the allegations that the earlier counsel for the petitioner has not conducted the proper cross-examination of the witness on the material points. The petitioner cannot be made to suffer because of the mistake of the earlier counsel in not conducting the proper cross-examination. Accordingly, the recall of the witness has been sought.

The application has been resisted by the prosecution and it has been alleged that no justifiable reason is made out to recall the witness. The witness has been cross-examined at length by the learned counsel for the accused and nothing has been left to be asked in his further cross-examination. The acceptance of the application will result in unnecessary harassment to the prosecution witness/complainant.

I have heard learned counsel for the petitioner and perused the record.

Section 311 of the Code enables the Court with the power to summon, recall and re-examine any witness, who has already been examined. The section confers a wide

discretion on the Court to act as the exigencies of justice and the circumstances of the case may require. The Court can recall a witness in the event, further examination of the witness appears to be essential for the just decision of the case. However, such a power cannot be exercised to permit any of the parties to fill up lacuna in its case. There must be sufficient and reasonable material to justify for exercise of the discretionary power vested in the Court.

The recall of the witness has been primarily sought on the score that he has not been effectively cross-examined by the earlier counsel. It is significant to note that the application under Section 311 of the Code moved on behalf of the petitioner is absolutely silent with regard to the material points on which the witness is required to be cross-examined. There is a general and vague allegation to the effect that the earlier counsel engaged by the counsel has not effectively cross-examined the witness. It may be mentioned here that in the absence of specific reference to any material aspect on which the witness has not been cross-examined, it may not be appropriate to shift the burden upon the counsel and recall the witness. Even otherwise, the mistake or lapse on the part of the defence counsel without any significant and substantial material cannot be termed to be circumstance to justify the recall of the witness in each and every case.

In the peculiar facts and circumstances of the instant case and particularly looking into the averments in the application, merely because the earlier counsel has allegedly shown laxity in not conducting the effective cross-examination of the complainant, cannot be construed to be a reasonable and justified ground to recall the witness. Full and effective opportunity has already been afforded to the petitioner to cross-examine the complainant.

In these set of circumstances, no justified ground is made out to recall the witness and no illegality or irregularity is made out in the impugned order, which may call for any interference by this Court.

Instant petition is, accordingly, dismissed.

October 28, 2022
vk

(Vivek Puri)
Judge

Whether speaking/reasoned : Yes
Whether reportable : Yes