

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

CRM-M-44510-2019 (O&M)

Date of decision: 24.11.2022

Sukhdev Kaur and another

...Petitioners

Versus

State of Punjab and another

...Respondents

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present:- Mr. Hardeep Singh, Advocate
for the petitioners/accused.

Mr. P. S. Pandher, AAG, Punjab.

Mr. Ankit Kumar, Advocate
for the complainant/respondent No. 2.

ARVIND SINGH SANGWAN, J. (Oral)

Prayer in this petition is for setting aside the order dated 04.08.2017, vide which the application filed by the petitioners under Section 311 Cr.P.C. for recalling complainant/respondent No. 2 Kuldeep Singh for his cross examination, was dismissed.

Learned counsel for the petitioners/accused submits that the FIR was registered with the allegations that the petitioners along with co-accused has entered into an agreement to sell with complainant/respondent No. 2 with regard to 08 Kanals of land. It is further submitted that as per preliminary allegations in the FIR, the aforesaid agreement to sell was procured by showing certain fake revenue records.

Learned counsel for the petitioners further submits that complainant/respondent No. 2 appeared as PW-1 and his examination-in-chief was recorded on 05.03.2015 and, thereafter, the case was fixed for

cross-examination of the complainant/respondent No. 2.

Learned counsel for the petitioners has relied upon some zimini orders passed by the trial Court, vide which it has come that cross-examination of PW-1 Kuldeep Singh could not be conducted by the defence counsel and on his request, the case was adjourned repeatedly, as reflected in the orders dated 07.04.2015, 30.05.2015, 12.06.2015, 27.07.2015, 19.08.2015 and 10.09.2015. It is further submitted that vide order dated 10.09.2015, noticing the fact that on the aforesaid dates, PW-1 Kuldeep Singh was not examined by the defence counsel, no further date was given and the cross examination of PW-1 Kuldeep Singh was treated as 'nil' and thereafter, the petitioners have moved an application under Section 311 Cr.P.C. for recalling PW-1 Kuldeep Singh for his cross examination, however, the same has been dismissed by the trial Court by passing the impugned order.

Learned counsel for the complainant/respondent No. 2 opposes the prayer of the petitioners on the grounds that firstly, despite availability of PW-1 Kuldeep Singh on seven dates, he was not cross examined intentionally by the defence counsel and secondly, even after filing of the application under Section 311 Cr.P.C., a number of dates were taken to address arguments and the case was adjourned.

In reply, learned counsel for the petitioners submits that simultaneously 14 prosecution witnesses have also been examined, when the said application remained pending.

Be whatsoever, considering the fact that unless the cross examination of complainant/respondent No. 2 PW-Kuldeep Singh is completed, the petitioners/accused cannot put their defence evidence to the

same and also in view of the fact that if the petitioners are not allowed to cross examine complainant/PW-1 Kuldeep Singh, it will prejudice their right of defence, the present petition is allowed and the impugned order dated 04.08.2017 is set aside.

The trial Court is directed to afford two effective opportunities to the petitioners/accused to cross examine the complainant/PW-1 Kuldeep Singh.

However, this will be subject to payment of costs of Rs. 15,000/-, to be paid to the complainant/respondent No. 2 Kuldeep Singh, for delaying the disposal of the trial.

24.11.2022

Waseem Ansari

**(ARVIND SINGH SANGWAN)
JUDGE**

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No