

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

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CRR-3039-2019 (O&M)

Date of Decision: 17.11.2022

BALWAN SINGH

...Petitioner

Versus

KARAMVIR SINGH

... Respondent

CORAM: HON'BLE MR. JUSTICE HARNARESH SINGH GILL

Present: Mr. Rajesh Nain, Advocate
for the petitioner.

Mr. Ishan Khetarpal, Advocate
for the respondent.

HARNARESH SINGH GILL, J.(Oral)

By way of the present petition, the petitioner seeks quashing of the order dated 01.10.2019 passed by the Judicial Magistrate, 1st Class, Kaithal, whereby an application filed under Section 311 Cr.P.C. by the petitioner for recalling PW-4, namely, Karamvir son of Ishwar Singh (complainant), for cross-examination, was dismissed.

Learned counsel for the petitioner submits that, as the earlier counsel had not put the material documents and questions to the witness i.e. the complainant, while cross-examining him, the petitioner had changed his counsel to represent his case before the Court below and thus, the learned trial Court fell in error in dismissing the application moved by the petitioner to recall the witness for further cross-examination.

On the other hand, while opposing the prayer made in the petition, learned counsel for the respondent has vehemently contended

that mere change of counsel is no ground to recall the witness more so when the entire complainant's evidence, statement under Section 313 Cr.P.C. of the accused and defence evidence, have already been recorded and concluded. He further submits that examination-in-chief of the complainant was recorded on 22.04.2019, the statement of accused under Section 313 Cr.P.C. was recorded on 15.05.2019 and from 15.09.2019 till 20.08.2019, the petitioner had availed as many as nine effective opportunities to lead his defence evidence, if any.

In support of his contentions, learned counsel for the respondent relies upon the judgment passed by Hon'ble Supreme Court in State of Haryana vs Ram Mehar and Others, 2016 (4) RCR (Criminal) 154 and Mahant Vedanand Saraswati @ Ved Prakash Sharma vs Devendra Kumar Mittal, 2014 (9) RCR (Criminal) 1479.

I have heard learned counsel for the parties.

The petitioner had availed sufficient opportunities to cross-examine the witness(es). Still further, no justifiable cause has been shown for the change of the counsel by the petitioner before the trial Court. There is no counter to the fact noticed in the impugned order that after conclusion of the complainant's evidence, statement of the petitioner under Section 313 Cr.P.C. was recorded and he had availed as many as nine effective opportunities to lead the defence evidence.

The Hon'ble Apex Court in Ram Mehar's case (supra), has held that when the large number of the witnesses have already been examined, the witnesses cannot be recalled on the ground of change of a lawyer.

As would appear from the impugned order, examination-in-chief of PW4, was conducted on 22.04.2019. Still further, the application seeking recalling of PW-4 was moved after availing umpteen number of opportunities to lead the defence evidence.

It could not be pointed out that the change of the lawyer for the petitioner before the trial Court, was for any justified cause. Having availed sufficient opportunities, it is not open to the petitioner to seek recalling of the witness, at this belated stage.

In view of the above, finding no merit in the present petition, the same is hereby dismissed.

17.11.2022

Aman Jain

(HARNARESH SINGH GILL)
JUDGE

<i>Whether speaking/reasoned</i>	:	<i>Yes/No</i>
<i>Whether reportable</i>	:	<i>Yes/No</i>