

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

**CRR-479-2023 (O&M)
Date of Decision: 20.02.2023.**

**DEEPAK KUMAR ... PETITIONER
VS.
STATE OF HARYANA .. RESPONDENT**

CORAM: HON'BLE MR. JUSTICE VIVEK PURI

Present : Mr. Abhimanu, Advocate,
for the petitioner.

VIVEK PURI, J.(ORAL)

The petitioner has assailed the order dated 15.11.2022 passed by the Court of learned trial Court vide which the application under Section 311 of the Code of Criminal Procedure (for short 'Code') has been dismissed.

The petitioner is facing trial for having committed the offence under Section 20 of the NDPS Act.

Learned counsel for the petitioner contends that as per the allegations, 9 kg of *ganja* has been recovered from the possession of the petitioner. The petitioner is seeking recall of PW2-Constable Sandeep Kumar, PW3-ASI Krishan Kumar, PW4-ASI Ajeet Kumar and PW9-Constable Sant Lal. It has been further contended that though the witnesses were cross-examined at the earlier instance, but they were not effectively cross-examined by the learned counsel representing the petitioner in the trial Court at the earlier instance. As such, recall of the witnesses has been sought.

Learned trial Court has dismissed the application, *inter alia*, observing that the case is fixed for defence evidence and arguments since 08.08.2019, at the earlier instance also an application under Section 311 of the Code was moved and the same was allowed and for the past more than 2 years, the case is listed for defence evidence and arguments, but no effort was made to recall the witnesses for further cross-examination, if any.

The permission to lead additional evidence has to be granted on the touchstone of the provisions of Section 311 of the Code. The recourse to Section 311 of the Code is to be resorted with an object to finding out the truth and procuring the proof of fact which may lead to just and correct decision of the case. Although, the provision enables the Court to recall and examine any witness, who has already been examined, but the discretion is to be exercised in the exigencies of the justice and circumstances of the case that may require. It has been borne in mind that such power cannot be exercised to permit any of the parties to fill up lacuna in its case.

The reason assigned for recall of 04 witnesses is to the effect that the earlier counsel has not effectively cross-examined them. The change of counsel at any subsequent stage may not be termed to be a sufficient and reasonable ground to recall the witness already examined. It has not been disputed that at the earlier instance, full and effective opportunity has been afforded to the petitioner and the case is at the stage of defence evidence for the last more than 02 years. It has also not been specified as to on which material aspect the witnesses have not been examined at the earlier instance. Merely because after conclusion of prosecution evidence, the petitioner has engaged another counsel, it cannot be construed as a circumstance to recall the prosecution witnesses. It appears that an attempt is being made by the petitioner to delay the proceedings in the trial Court by seeking the recall of the witnesses by moving an application under Section 311 of the Code. Keeping in view the entire circumstances emerging in the instant case, no justified ground is made out to recall the witnesses by invoking the provisions of Section 311 of the Code.

For the aforesaid reasons, finding no merit in the present case and the same is dismissed.

20.02.2023
smriti

(VIVEK PURI)
JUDGE

Whether speaking/reasoned
Whether Reportable

: Yes/No
: Yes/No