

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Sr. No.129

CRM-M-6996-2023
Date of Decision: 09.02.2023

Mohinder Singh

.... Petitioner

Versus

State of Punjab and another

... Respondents

CORAM: HON'BLE MR. JUSTICE TRIBHUVAN DAHIYA

Present: Mr. Avtar Singh Bhatti, Advocate
for the petitioner.

Mr. Jashandeep Singh, AAG, Punjab.

TRIBHUVAN DAHIYA, J. (ORAL)

This is a petition under Section 482 Cr.P.C. seeking quashing of the order dated 15.11.2022 (Annexure P-5) passed by SDJM Dasuya, District Hoshiarpur, by which the petitioner's application under Section 311 Cr.P.C. was dismissed in case FIR No.0056 dated 24.04.2017, registered under Sections 498-A and 406 IPC at PS Dasuya, District Hoshiarpur.

Learned counsel for the petitioner states that on the date when examination-in-chief of PW3-Sarwan Singh was recorded, i.e., 30.07.2022, petitioner's counsel Mr. R.S.Abhi was busy in District Court Hoshiarpur, and the other counsel Smt. Kamlesh Rani was ill. Therefore, the material witness could not be cross-examined, nor anybody on their behalf could appear in the Court for the purpose. An application to that effect was moved by the petitioner on 16.08.2022 (Annexure P-3), which has been mistakenly dismissed by the trial Court by observing that on 30.07.2022, after examination-in-chief of PW3 was complete, the accused failed to cross-

examine the said witness despite repeated calls. Accordingly, cross-examination of PW3 was treated as nil.

Learned State counsel, who is on advance notice, upon instructions from ASI Jasvir Singh, submits that trial of the case is going on and is fixed for 02.03.2023 for examination of prosecution witnesses.

In case cross-examination of PW3, the material witness, is treated as nil, that would cause grave prejudice to the petitioner/accused. A litigant should not be made to suffer for fault of his/her counsel. Besides, the reasons assigned by the petitioner by moving the application dated 16.08.2022 have not been considered by the trial Court while passing the impugned order dated 15.11.2022. Since trial of the case is still going on, it is deemed appropriate to allow the petitioner to cross-examine the said witness in the interests of justice and fair trial. Accordingly, the impugned order dated 15.11.2022 is set aside. The petitioner is permitted to cross-examine PW-3 at a date to be fixed by the trial Court for the purpose, subject to payment of ₹15,000 as costs to be deposited with the Legal Aid Cell, Hoshiarpur.

Petition stands allowed.

(TRIBHUVAN DAHIYA)
JUDGE

09.02.2023
Maninder

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