

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

(204)**CRM-M-18017-2022****Date of Decision: 30.01.2023**

Jawinder Singh

...Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present: Mr. Narinder Singh, Advocate, for the petitioner.

Mr. Amit Shukla, AAG, Punjab.

HARKESH MANUJA, J.(ORAL)

By way of present petition filed under Section 482 of the Code of Criminal Procedure, 1973, prayer has been made for setting aside an order dated 04.04.2022 (Annexure P-1) passed by learned Additional Sessions Judge, Rupnagar, dismissing an application filed at the instance of petitioner invoking Section 311 Cr.P.C., praying for recalling/re-examining PW-2 Surinder Singh.

Arising out of a land dispute between two brothers i.e. petitioner (accused) and Surinder Singh-complainant, FIR No.37 dated 10.07.2019 came to be registered under Sections 450, 307, 326, 506 IPC and Sections 27 and 30 of the Arms Act, at Police Station Singh Bhagwantpura, District Rupnagar, at the instance of Surinder Singh, against the petitioner, pertaining to an incident dated 10.07.2019 wherein, the son of Surinder Singh namely Kulwinder Singh got injured. After filing of *challan*, charges were framed by the trial Court against the petitioner vide order dated 14.11.2019 under Sections 307, 326, 450, 506 IPC and Section 30 of the Arms Act. During trial, Surender Singh

whereas, injured Kulwinder Singh appeared as PW-7, however, turned hostile.

The trial Court vide order dated 05.03.2020, amended the charges by adding Section 27 of the Arms Act instead of Section 30 thereof. Later, an application under Section 311 of the Code of Criminal Procedure came to be filed at the instance of petitioner for recalling/re-examination of Surinder Singh PW-2 which was opposed at the instance of prosecution by filing its objection. The trial Court vide order dated 04.04.2022, dismissed the aforesaid application by recording that the same was not filed with *bona fide* intention, it is the said order which has been impugned by way of present petition.

Learned counsel for the petitioner submits that with the amendment of charges by way of replacing Section 27 of the Arms Act, instead of Section 30 thereof, the petitioner was in fact required to be afforded an opportunity to cross-examine the prosecution witness so as to defend himself on the aspect of charge under Section 27 of the Arms Act added against him vide order dated 05.03.2020. Learned counsel also submits that in case the petitioner was not afforded any opportunity to cross-examine the prosecution witness as regards the amended charge, he was going to suffer serious prejudice.

On the other hand, prayer made herein has been opposed at the instance of respondent-State by submitting that in fact the application filed at the instance of petitioner for recalling of the complainant-PW-2 Surinder Singh appears to be a ploy to make him resile from his previous statement whereas the provisions of Section 311 Cr.P.C. cannot be used for the said purpose.

I have heard learned counsel for the parties and have gone through the paper book, I find substance in the submissions made on behalf of

the petitioner. The trial Court while passing the impugned order has failed to appreciate that the object of framing of charge in a criminal trial is to make the accused aware of the specific case put forth against him so that he is in a position to defend himself properly and effectively and is clearly informed about the nature of allegations levelled against him.

Once the charges were amended by the trial Court vide order dated 05.03.2020, post recording of the statement of the prosecution witness including PW-2 Surinder Singh-complainant by adding charge under Section 27 of the Arms Act in place of Section 30 thereof, the petitioner was required to be afforded an opportunity to cross-examine the prosecution witness by recalling them so as to grant the petitioner, sufficient and adequate opportunity in order to defend himself. The trial Court while passing the impugned order, in fact, failed to appreciate that in a criminal trial the accused has a substantial and valuable right to defend himself qua the charges framed against him by cross-examining the prosecution witnesses which forms an integral part of fair trial. Thus, in the facts of the present case, the trial Court failed to consider its own powers vested under Section 311 Cr.P.C.

In view of the discussion made hereinabove, the present petition is hereby allowed by setting aside the order dated 04.04.2022 (Annexure P-1) and petitioner is granted an opportunity to recall/re-examine PW-2 Surinder Singh, before the trial Court.

(HARKESH MANUJA)
JUDGE

30.01.2023
anil

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