

2023:PHHC:061448

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

116

CRM-M-20385-2023

Date of decision: 25.04.2023

RINKU

...Petitioner(s)

VERSUS

STATE OF PUNJAB

...Respondent(s)

CORAM : HON'BLE MR. JUSTICE GURBIR SINGH

Present: Ms. N.K. Vadehra, Advocate
for the petitioner.

GURBIR SINGH, J. (ORAL)

The prayer in this present petition under Section 482 of Cr.P.C. is for setting aside order dated 28.02.2023 (Annexure P-2) vide which application under Section 311 of the Cr.P.C. has been partly allowed in case FIR No. 182 dated 30.10.2018 under Section 21 of NDPS Act, Police Station Dinanagar.

Learned counsel for the petitioner submits that on inspection of the record, it was found that PW-1 ASI Varinder Pal Singh and PW-4 Retired Inspector Kedar Singh were already examined. Cross-examination of PW-1 was not properly conducted and cross-examination of PW-4 was treated as Nil. The cross-examination of said witnesses was necessary, so petitioner moved an application (Annexure P-1) for recalling the said witnesses.

The said application was partly allowed. Only PW-4 was allowed to be cross-examined. The further cross-examination of PW1 is necessary for the complete defence of accused.

Heard.

The order dated 28.02.2023 read as under:-

*“Accused Rinku not appeared however an
application seeking exemption from his personal appearance*

has been moved by his counsel. In view of the reasons mentioned in the application, the personal appearance of above accused is exempted for today only. Heard on the application so moved by the accused under Section 311 CrPC for recalling PW-1 ASI Varinder Pal and PW-4 retired Inspector Kedar Singh for their cross-examination. Application has been moved on the ground that he said witness had been examined and cross- examination of PW-4 has been treated as nil. Accused wants to cross-examine those two witnesses which are material witnesses and some necessary facts can come to the light after effective cross-examination. Application has been replied and opposed. Perusal of the file shows that PW ASI Varinder Singh has been examined on 17.01.2020 and at that time was cross-examined as well. PW-4 Inspector Kedar Singh was examined on 16.09.2022, however, his cross- examination was treated as nil after opportunity having been given for the same. Now as far as statement of PW-1 is concerned the application is silent as to what has been the material things those have been left to be put up the witness and on what point. Simply contending that effective cross-examination could not be conducted is no ground to recall the said witness for the purpose of his cross-examination. However, as far as the statement of PW-4 Kedar Singh is concerned his testimony would be material as he had been a person at that time as SHO before him the accused was produced with the case property and who undertook further proceedings in this respect as well. He was not cross-examined at the relevant time. It is contended that the counsel on that day was not available. Given the material nature of the said witness having been left to be cross-examined, this Court is of the view that for the effective adjudication of the case one opportunity should be granted to accused to cross-examine the said witness in the interest of justice. As per the provisions of Section 311 Cr.P.C. the Court can recall witness for the purpose of his re-examination if the same is found just and essential for the effective adjudication. So for that matter the application is allowed partly for recalling the witness Inspector

Kedar Singh only. For PWs particularly PW Inspector Kedar Singh for his cross-examination to come up on 23.03.2023.”

The learned trial Court has observed that ASI Varinder Pal Singh had already been examined on 17.01.2020 and at that time was cross-examined as well. The application is silent about the material things which were left to be put up the witness and on what point. Simply contending that effective cross-examination could not be conducted is no ground to re-call the said witnesses for cross-examination.

On asking, learned counsel for the petitioner further submits that if those points which are to be put to PW1 are disclosed at this stage then no purpose would be served by recalling the witness.

In the FIR No. 182 dated 30.10.2018, PW-1 ASI Varinder Pal Singh has been re-called on 17.01.2020. As per the order, the application for cross-examining him was moved on 09.01.2023. There is no explanation as to why petitioner avoided for such a long period in moving the application. Unless there are specific reasons or grounds, prayer for re-examination of the witnesses cannot be granted. The person cannot be re-examined in the trial at the mere asking. Even statement of PW1 is not annexed. Application is vague just to delay the disposal of the trial.

There is no ground to interfere in the order passed by the trial court, thus, present petition stands dismissed.

(GURBIR SINGH)
JUDGE

25.04.2023
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Whether reasoned/speaking?	Yes/No
Whether reportable?	Yes/No