

**In the High Court for the States of Punjab and Haryana
At Chandigarh**

CRM-M-21448-2023 (O&M)
Date of Decision:-01.05.2023

Radhika Dhingra ... Petitioner

Versus

State of Punjab ... Respondent

CORAM: HON'BLE MR. JUSTICE GURVINDER SINGH GILL

Present:- Mr. Satish Kumar, Advocate for the petitioner.

GURVINDER SINGH GILL, J.(Oral)

1. The petitioner challenges order dated 18.4.2023 (Annexure P-11) passed by learned Special Judge, Ludhiana vide which his application filed under Section 311 Cr.P.C. seeking recalling of PW-Rakesh Kumar for the purpose of affording cross-examination to the petitioner has been declined.
2. The petitioner along with two other co-accused has been facing trial in a case arising out of FIR No. 174, dated 05.12.2015, Police Station Sarabha Nagar, Ludhiana, under Sections 420, 384, 506, 120-B IPC and Sections 7, 13(2) of the Prevention of Corruption Act, 1988. When the matter was fixed for recording statement of PW-1-Rakesh Aggarwal on 16.1.2018, petitioner Radhika Dhingra as well as co-accused Gurcharan Singh were given opportunity to cross-examine the witness, but they did not chose to cross-examine and accordingly the trial Court recorded their cross-examination as 'Nil'. Since, the counsel for the 3rd accused Harvinder Singh was not available and an application had been moved on behalf of the counsel

namely Mr. B.S.Sidhu, Advocate, for deferring his cross-examination as he was not available due to a breavment in his family i.e. death of his grandfather, the cross-examination qua Harwinder Singh was deferred and the matter was adjourned to 18.1.2018 as recorded in zimni order dated 16.1.2018 (Annexure P-5). The concluding part of the said statement recorded on 16.1.2018 (Annexure P-6) reads as follows:

“
XXXXXXmn by the accused Radhika and Gurcharan Singh.
Opportunity Given.
Nil.
XXXXXXmn by the remaining accused deferred.”

3. Thereafter, when the matter was taken up on 18.1.2018 for recording cross-examination by the 3rd accused namely Harvinder Singh, the PW was not present and matter was adjourned. The cross-examination was recorded thereafter on 06.02.2018.
4. An application (Annexure P-8) was moved on behalf of the petitioner as well as co-accused Gurcharan Singh on 18.1.2018 under Section 311 Cr.P.C. seeking recalling of complainant-Rakesh Aggarwal.
5. Reply to the said application was filed by the State on 03.04.2018 (Annexure P-9) wherein the State denied all the averments made in the application and took a specific stand that due opportunity for cross-examination of PW had been afforded to Radhika and Gurcharan Singh and it was thereafter that the cross-examination was recorded as ‘Nil’.
6. The said application was somehow adjourned several times thereafter and in between Covid-19 had also set-in. Ultimately when the application was taken up for hearing on 18.4.2023, the co-accused Gurcharan Singh did not

press the application and consequently the same was dismissed as not pressed qua Gurcharan Singh. As such, the application was considered qua petitioner-Radhika Dhingra only. The Trial Court while considering the same noticed that due opportunity had been afforded to the petitioner to cross-examine the witness on 16.1.2018 and that petitioner and co-accused Gurcharan Singh themselves opted not to cross-examine the PW and accordingly dismissed the application under Section 311 Cr.P.C. Though, the trial Court has recorded that there has been a change of counsel and that the same would not furnish sufficient ground for recalling the witness, but as a matter of fact when the application was filed there was no change of counsel and it was subsequently that the counsel had been changed.

7. Learned counsel for the petitioner submitted that the impugned order i.e. 18.4.2023 is a non-speaking order and no reasons have been recorded therein for recording the cross-examination of the petitioner as 'Nil' in the statement of PW-1-Rakesh Aggarwal. Learned counsel has further submitted that one of the reasons assigned by the trial Court in declining the application that the petitioner had not disclosed the aspects on which the cross-examination is to be conducted cannot be said to be a valid reason for declining an application filed under Section 311 Cr.P.C.
8. This Court has considered the rival submissions.
9. A perusal of statement of PW-1-Rakesh Aggarwal recorded on 16.1.2018 clearly shows that the Presiding Officer has specifically recorded that opportunity of cross-examination was afforded to the petitioner as well as to Gurcharan Singh and it was thereafter that their cross-examination was recorded as 'Nil'. Under these circumstances no other reason was required to

be recorded for treating the cross-examination on behalf of petitioner as ‘Nil’. The petitioner having himself chosen not to cross-examine the witness when opportunity was given, this Court does not find any valid ground for recalling the witness again, at this stage. The impugned order does not suffer from any infirmity and is upheld.

9. The petition is sans any merit and is hereby dismissed.

01.05.2023
mohan

(GURVINDER SINGH GILL)
JUDGE

Whether speaking /reasoned	Yes / No
Whether Reportable	Yes / No