

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRR-1438-2022

Date of decision : 05.01.2023

AMIT KUMAR

... Petitioner

Versus

STATE OF PUNJAB

...Respondent

CORAM: HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present: Mr. Arjun Veer Sharma, Advocate
for the petitioner.

Ms. Ramta Chaudhary, DAG, Punjab.

JASJIT SINGH BEDI, J.

The prayer in the present petition is for setting aside the order dated 01.06.2022 passed by the Judicial Magistrate, 1st Class, Ludhiana in case FIR No.207 dated 21.09.2017 registered under Sections 61, 01, 14 and 78 of the Punjab Excise Act, 1914 at Police Station Division No.4, Ludhiana bearing registered No.1333 of 2018 dated 18.09.2021 vide which the application under Section 311 Cr.P.C. filed by the petitioner/accused has been dismissed.

2. The brief facts of the case are that the present FIR was registered at the instance of PW-1 HC Dilbarg Singh who stated that the petitioner was apprehended in his car from which 18 boxes of country-made liquor were recovered. The copy of the FIR is annexed as Annexure P-1 to the petition.

3. Pursuant to the registration of the FIR, a report under Section 173 Cr.P.C. was presented on 06.10.2018 and charges were framed on 10.10.2018.

4. The first date for examination of prosecution witnesses was 14.11.2018. Thereafter, the complainant PW1-Dilbarg Singh was ordered to be served through bailable warrants on 11.01.2019 for 19.01.2019 and 12.02.2019 for 01.03.2019. His examination-in-chief was recorded on 01.03.2019 and the case was adjourned without any cross-examination having been conducted. The order framing of charges and the Zimni orders are annexed as Annexure-2 to the petition.

5. Subsequently, the petitioner is stated to have changed his counsel as his counsel who was earlier representing him had stopped appearing in the Trial. On examining the record, it was revealed that the PWs had not been cross-examined. Therefore, on 17.11.2021, an application was moved under Section 311 Cr.P.C. for recalling PW1-Dilbarg Singh, PW2-Jasbir Singh and PW3-HC Sukhdev Singh. The said application is annexed as Annexure P-3 to the petition.

Subsequent to the filing of the application and reply dated 04.03.2022 was filed. The copy of the said reply is annexed as Annexure P-4.

6. On consideration of the application and the reply, the impugned order came to be passed on 01.06.2022 which is under challenged in the present petition.

7. When the present petition had come up for hearing on 13.07.2022 , the following order was passed:-

“The prayer in the present petition is for setting aside the order dated 0-1.06.2022 passed by the learned JMIC, Ludhiana in case FIR No.207 dated 21.09.2017 under Sections 61/1/14 and 78 of The Punjab Excise Act, 1914 registered at Police Station

Division No.4, Ludhaina whereby the application of the accused under Section 311 Cr.PC has been dismissed.

The Counsel for the petitioner contends that on 01.03.2019 and 11.12.2019 PW-1 Dilbar Singh, PW-2 Jasbir Singh and PW-3 HC Sukhdev Singh were present and examined. Unfortunately due to oversight the petitioner and his counsel were unaware that their cross examination had not been conducted and he thus prays for one effective opportunity to cross examine the said three witnesses.

Notice of motion for 26.07.2022.

In the meanwhile the trial may proceed but the final order be not passed.”

8. Thereafter, it was adjourned and has come up for final adjudication today.

9. The learned counsel for the petitioner contends that in fact, the prosecution had examined PWs, Dilbarg Singh, Jasbir Singh and Sukhdev Singh but neither the petitioner/accused nor his counsel was aware about this fact and therefore the cross-examination could not be conducted. It was only subsequently that this fact was brought to the notice of the petitioner when his counsel inspected the record. Since the examination-in-chief in the absence of cross-examination would seriously prejudice the case of the petitioner/accused, he seeks only one opportunity to conduct the cross-examination of all the three witnesses as per the application (Annexure P-3).

10. On the other hand, the learned State counsel contends that sufficient opportunity has been granted to the accused to cross-examine the witnesses. The present application has been moved after a gap of more than 02 ½ years from the date of examination of PW1-Dilbarg

Singh. Apparently, the said application has been moved only to delay proceedings and therefore, the present petition deserves to be dismissed.

11. I have heard the learned counsel for the parties.

12. Admittedly, the prosecution witnesses were examined but as per the petitioner, the said fact was unknown to him and therefore, the cross-examination could not be conducted by his counsel. A perusal of Section 311 Cr.P.C. would show that where the evidence appeared to be essential for the just adjudication of a case, a witness could be recalled at any stage of the Trial. In the present case, in the absence of cross-examination, the prosecution evidence would go unrebutted. On the other hand, no prejudice shall be caused to the prosecution if an opportunity is granted to the petitioner/accused to cross-examine the three witnesses in a time bound manner. Therefore, there is considerable merit in the present petition.

13. In view of the above, the present petition is allowed and the order dated 01.06.2022 passed by the Judicial Magistrate, 1st Class, Ludhiana is hereby set aside. One more opportunity is granted to the petitioner to cross-examine PW1-Dilbarg Singh, PW2-Jasvir Singh and HC Sukhdev Singh who shall be summoned on any date convenient to the Trial Court for the said purpose. Pursuant to their cross-examination, the Trial Court is directed to conclude the Trial within 08 weeks.

(JASJIT SINGH BEDI)
JUDGE

05.01.2023
JITESH

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