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

CRR-1928-2022 (O&M)
Date of Decision:- 17.05.2023

RAJENDER SINGH

....Petitioner

Vs.

STATE OF HARYANA

...Respondent

CORAM:-HON'BLE MS. JUSTICE AMARJOT BHATTI

Present:- Mr. Satyawan Singh Nain, Advocate for the petitioner.
Ms.Mayuri Lakhanpal, DAG, Haryana.

AMARJOT BHATTI, J. (Oral)

1. The petitioner Rajender Singh has filed this revision against the order passed by learned Additional Sessions Judge, Gurugram on 02.08.2022 whereby the application filed by him under Section 311 Cr.P.C. to recall one of the material prosecution witness for further cross-examination i.e. PW6 has been declined.

2. It is argued that the learned trial Court has declined the application without considering the material available on record vide impugned order dated 02.08.2022 passed by learned Additional Sessions Judge, Gurugram. The testimony of aforesaid witness is material for the adjudication of the case. The copy of the statement of Ankit (PW6) is

Annexure P-1. The petitioner is behind the bars. He was provided legal aid counsel to conduct the case on behalf of the accused. However, on the day when the statement of Ankit PW-6 witness was recorded the legal aid counsel did not appear in the Court and he had sent some associate to cross examine the witness. The said proxy counsel did not cross-examine the witness and one single line cross-examination was done. The accused, thereafter, hired regular counsel. He filed an application under Section 311 Cr.P.C. to recall the aforesaid witness for cross-examination but the said application was wrongly declined by learned Additional Sessions Judge by passing impugned order dated 02.08.2022.

3. The aforesaid revision is opposed by learned counsel representing the State. It is argued that the counsel for the accused was given full opportunity to cross-examine the witness and the said opportunity was duly availed by the counsel for the accused and Ankit PW-6 was duly cross-examined, therefore, there was no reason to recall the witness. The application filed by the petitioner under Section 311 Cr.P.C. before the trial Court was without justification and it was filed only to fill up the lacuna in the case. Therefore, it was rightly declined vide order dated 02.08.2022. The revision preferred by the revisionist is without merit and the same is liable to be rejected.

4. I have considered the arguments and I have gone through the record. Rajender Singh is facing trial in the FIR No.11 dated 17.02.2021 under Sections 342, 376 (2) (n) and 506 IPC registered at Police Station Women Manesar, Gurugram. It is further not disputed that the petitioner/accused who was in custody was represented by Gaurav Vashisht, Advocate. The prosecution evidence was under progress. During

this period, statement of Ankit PW6 was recorded. The copy of statement is Annexure P-1. From the testimony of Ankit PW-6 it is clear that one Mr. Gaurav proxy counsel for Mr. Gaurav Vashisht counsel for the accused had appeared and cross examined Ankit PW-6 by asking one question and thereafter the cross examination was closed. Firstly, the cross examination is conducted by a proxy counsel who was never authorised by the accused to participate in the effective proceedings of the trial. The cross-examination was to be conducted by Sh. Gaurav Vashisht who was engaged for the petitioner/accused. There is nothing on record to explain why the regular counsel did not appear to conduct the cross-examination of the witness. Even the learned Additional Sessions Judge Gurugram did not consider this point rather he permitted the proxy counsel to cross-examine the witness. Thereafter, the accused filed application under Section 311 Cr.P.C. to recall Ankit PW6 for cross-examination. The said application is Annexure P-4. However, the said application has been declined by passing impugned order dated 02.08.2022. It was only the prerogative of regular counsel to conduct the cross-examination of the witness. The proxy counsel could have asked for date or he could have informed the trial Court regarding the delay in arrival of regular counsel. He was not competent to conduct the trial on behalf of the accused who was in custody. He was never engaged by the accused. Therefore, in my opinion there was no proper cross-examination of Ankit PW-6 by the regular counsel. The interest of the accused will be prejudiced if he is denied the right to cross-examine the witness examined by the prosecution. Under these circumstances, I find merit in the revision filed by the petitioner and the same is allowed. The impugned order dated 02.08.2022

is not justified and is accordingly set aside. The learned trial Court is directed to recall Ankit PW-6 and give one effective opportunity to the counsel for the accused to cross-examine the witness. The revision preferred by the petitioner is, accordingly, allowed.

17.05.2023

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(AMARJOT BHATTI)
JUDGE

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