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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-41658-2023(O&M)

Date of Decision: 12.09.2023

Darshna

....Petitioner(s)

Versus

State of Haryana

.....Respondent(s)

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Mr. D.R. Punia, Advocate, for the petitioner.

JASGURPREET SINGH PURI, J.

1. The present petition has been filed under Section 482 of the Code of Criminal Procedure for quashing of order dated 05.08.2023 (Annexure P-2) passed by the Sub Divisional Judicial Magistrate, Tosham whereby the application filed by the petitioner under Section 311 Cr.P.C for recalling of two witnesses for further cross examination has been declined.

2. Learned counsel for the petitioner submitted that the petitioner is an accused and had filed an application under Section 311 Cr.P.C for recalling of PW2 and PW3 on the basis of the statement made by PW7 and since some discrepancies had cropped in the statement of PW7 and the record produced by PW2 and PW3 and therefore, the application was filed for recalling of PW2 and PW3 for further cross-examination by the present petitioner through her counsel. He submitted that the said application has been dismissed by the learned trial Court erroneously and therefore, the order dated 05.08.2023 may be set aside in this regard.

3. I have heard the learned counsel for the petitioner.

4. The grievance of the petitioner is that the petitioner who is an accused had filed an application under Section 311 Cr.P.C for recalling of PW2 and PW3 for further cross-examination. The learned trial Court vide impugned order had dismissed the application. While considering the application, the learned trial Court observed that when PW2 and PW3 were called as witnesses the learned defence counsel had ample opportunity to examine both the witnesses on all aspects and now the application has been moved for recalling them for further cross-examination only because thereafter when PW7 was examined, then on the basis of his statement, the aforesaid two witnesses PW2 and PW3 are sought to be examined once again which cannot be permitted because in this way there can be no end to the cross-examination of the witnesses. The learned trial Court observed that in the process of recording of evidence of various witnesses the earlier witness examined cannot be recalled for further cross-examination otherwise there will be no end to the trial. The learned trial Court also referred to the age of PW2 to be 80 years old in the year 2022 and he cannot be called again and again as per the wishes of the accused.

5. After hearing the learned counsel for the petitioner, this Court is of the view that no perversity and illegality can be found in the order passed by the learned trial Court dated 05.08.2023. The reason given by the petitioner for recalling of PW3 is that there was a dispute with regard to the authenticity of a power of attorney regarding which a discrepancy had come in the statement of PW3 with regard to the religion of executant and as to whether he was alive or dead. The trial of the case is already going on and the mere fact that some discrepancy has cropped in the statement of PW3 vis-a-vis the documents and statement of PW2 and PW3 cannot become a ground for further cross-examination of PW2 and PW3 and in this way, the trial will be prolonged for

no justifiable reason. Even otherwise also PW2 is stated to be 80 years of age and ample opportunity was given to cross examine him and therefore, he cannot be recalled for further cross-examination.

5. In view of the above, no illegality or perversity is found in the impugned order dated 05.08.2023 (Annexure P-2) passed by the learned Sub Divisional Judicial Magistrate, Tosham and therefore, the present petition is hereby dismissed.

12.09.2023

rakesh

(JASGURPREET SINGH PURI)

JUDGE

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