

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CRM-M-47813-2023
Reserved on 02.11.2023
Pronounced on 28.11.2023

Pardeep Kumar....Petitioner.

Versus

State of Punjab....Respondent.

CORAM:- HON'BLE MR. JUSTICE SANJIV BERRY

Present:- Mr.Lakshay Bector, Advocate,
for the petitioner.

Mr. Subhash Godara, Addl. AG, Punjab.
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SANJIV BERRY, J.

Instant petition has been filed under Section 482 Cr. P.C. for quashing of the impugned order dated 28.09.2022 (Annexure P-2) passed by the Court of learned Judicial Magistrate Ist Class, Ludhiana, vide which application dated 30.08.2022 (Annexure P-1), filed by the petitioner for recalling the prosecution witnesses, namely Bhupinder Singh as PW1, Ravinder Kaur as PW2 and Jasvir Singh as PW4 was dismissed in case FIR are as under: -

FIR No.	Dated	Sections	Police Station
69	21.04.2015	420 IPC	P.S. Jamalpur, Ludhiana.

2. In nutshell, brief facts of the case are that the aforesaid FIR was registered against the petitioner and other co-accused at the instance of Bhupender Singh on the allegations that accused have committed fraud with

the complainant and is not getting the sale deed executed and had caused wrongful gain to the accused and wrongful loss to the complainant. After completion of investigation challan was presented and charges were framed against the petitioner and other co-accused on 20.01.2018 and thereafter the case was fixed for prosecution evidence.

3. It is *inter alia*, contended by learned counsel for the petitioner that during the course of trial the prosecution had examined PW1 Bhupinder Singh, PW-2 Ravinder Kaur, and PW-4 Jasvir Singh who were cross examined at length by learned counsel representing the co-accused but their cross examination has been treated as “opportunity given, nil”. He contends that this fact came to the notice of the petitioner only when he changed his counsel for the purpose of preparing the arguments and moved application under Section 311 Cr.P.C which has illegally been dismissed by learned Magistrate vide order dated 28.09.2022 (Annexure P-2).

4. Learned counsel for the State has however assailed the submissions of learned counsel for the petitioner by arguing that the aforesaid witnesses were examined and cross examined in the presence of the petitioner and his counsel. He submits that although the learned counsel representing the co-accused had availed the opportunity to cross-examine the witnesses at length but for the reasons best known to petitioner and his counsel they had not availed the opportunity and learned trial Court accordingly treated the cross examination of the witnesses on behalf of the petitioner as nil after affording opportunity. He submits that the witnesses were examined wayback in the year 2018-2019 and the instant application

had been moved at a belated stage by the petitioner on 30.08.2022, as such there is no case in favour of the petitioner.

5. After considering the rival contentions and perusing the documents placed on record by the petitioner, it is not disputed that the petitioner along with other co-accused is facing the trial in the aforesaid FIR. It is also not disputed that during the course of trial the prosecution had examined PW1 Bhupinder Singh whose cross-examination-in chief was recorded on 16.01.2017 vide Annexure P-3 and then was cross examined at length by learned counsel appearing on behalf of co-accused on 04.12.2018 and again on 18.01.2019, however the counsel on behalf of the petitioner had not availed the opportunity of cross-examination on his behalf and was treated as nil. Similarly PW-2 Ravinder Kaur vide Annexure P-4 was examined on 19.03.2018 and cross examined by the learned counsel representing the co-accused on 04.12.2018 and again the opportunity was being afforded to the petitioner and his counsel to cross examine on the witnesses they opted not to cross examine and as such it was treated as opportunity given not availed vide order dated 04.12.2018. Another witness PW4 Jasvir Singh was examined vide Annexure P-5 on 27.11.2019 when again the learned counsel representing the other co-accused had cross examined the witness on length but the petitioner and his counsel did not opt to cross examine the witnesses and it was treated as "Nil, opportunity given"

6. While moving the application under Section 311 Cr.P.C petitioner had put up the case that while changing his counsel, the aforesaid fact came to the notice of the petitioner and for the fault of his counsel the petitioner should not suffer and as such the prayer to recall the aforesaid

witnesses for the purpose of cross-examination. The learned trial Court after hearing the arguments and considering the record passed the impugned order Annexure P-2 which has been challenged by the petitioner.

7. Considering the record produced by the petitioner, it transpires that the instant application under Section 311 Cr.P.C has been moved by the petitioner. As per this provision, any Court may at any stage of any inquiry, trial or other proceedings under this Code, summons any person as a witness or examine any person in attendance, though not summoned as a witness, or recall and re-examine any person already examined, and the Court shall summon and examine or recall and re-examine any such person if his evidence appears to it to be essential to the just decision of the case.

8. It is not disputed that under Section 311 Cr.P.C. the Court can summon any person at any stage of trial or proceedings if the evidence of that person is required to be essential for the just decision of the case. In the present case, as stated above, the witnesses were examined and cross-examined on different dates between a span of period from 16.01.2017 to 27.11.2019 and it also worth mentioning that the petitioner as well as co-accused were duly represented by their respective counsels. Although the counsel representing the co-accused had chosen to cross examine the aforesaid witnesses at length, but when afforded the opportunity, for the reasons best known to them, the petitioner and his counsel had not availed the opportunity to cross examine the witnesses, although specifically offered. Thereafter the petitioner and his counsel never sought any opportunity to cross examine the witnesses. Now, when the trial has come to fag end, the petitioner has tried to cover his lapses on the pretext of changing

his counsel. A person conducting the case has to be vigilant, while conducting the case, however, any mistake by way of inadvertence can be rectified but the intentional conduct cannot in any manner be allowed to be amended at a belated stage because if, it is allowed, then there will not be any end to such like applications being made on one pretext or the other just to linger on the trials. Once, it is observed that the aforesaid witnesses were examined on different dates within a span of two years in the presence of the petitioner and his counsel and once the counsel for the co-accused had thoroughly cross-examine these witnesses, the petitioner as well as his counsel despite having been afforded opportunity to cross examine the witnesses but had chosen not to do it, then it would not lie in their mouth to claim that there had been lapse on the part of his counsel. In these circumstances, it is observed that the petitioner and his counsel had intentionally chosen not to cross-examine the aforesaid witnesses at the appropriate time despite specific opportunity having afforded by the learned trial Court. Now moving the instant application after unexplained delay of about 5 years is simply to delay culmination of trial. Thus, it is observed that no ground is made out to interfere in the impugned order dated 28.09.2022 (Annexure P-2) nor is there any infirmity therein. As a consequent, finding no merit, the present petition is hereby dismissed.

9. Any observation made above shall not be construed as opinion of this Court on the merits of the case.

28.11.2023

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(SANJIV BERRY)

JUDGE

i) Whether speaking/reasoned?

Yes/No

ii) Whether reportable?

Yes/No