

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

205

**CRM-M-44602-2019
Date of decision: 19.04.2023**

ANU ALIAS SARBJIT KAUR AND OTHERS

.....Petitioners

VERSUS

AVTAR SINGH

.....Respondent

CORAM: HON'BLE MR. JUSTICE VIKRAM AGGARWAL

Present: Mr. Manohar Lall, Advocate
for the petitioners.

Mr. Angad Chahal, Advocate
for the respondent.

VIKRAM AGGARWAL, J (ORAL)

The petitioner seeks quashing of the order dated 27.08.2019 (Annexure P-5) passed by the Additional Sessions Judge, SBS Nagar vide which the revision petition filed by the petitioner against the order dated 08.12.2018 (Annexure P-3) passed by the Additional Chief Judicial Magistrate SBS Nagar dismissing the application filed under Section 311 Cr.P.C. was dismissed.

The facts, in brief are that a complaint was filed by one Avtar Singh (hereinafter referred to as the complainant) against three persons (the present petitioners). During the course of the pre charge evidence, the complainant Avtar Singh appeared as CW-1. His examination was completed after which another witness who appeared as CW-3 placed on record certain documents. An application was filed by the present petitioners under Section 311 Cr.P.C. seeking to recall the complainant

Avtar Singh for cross- examining him with regard to the said documents. This application was declined by the trial Court vide order dated 08.12.2018 (Annexure P-3) and the revision petition challenging the order was also dismissed by the Additional Sessions Judge, SBS Nagar vide order dated 27.08.2019 (Annexure P-5).

I have heard learned counsel for the parties.

Learned counsel for the petitioners has submitted that both the Courts below did not examine the matter from the correct perspective and once certain documents had been placed on record by a witness after the completion of the cross examination of the complainant in pre charge evidence, the accused was well within his right to cross-examine the complainant with regard to those documents prior to the consideration on the framing of charges. It has been submitted that in the circumstances, the order deserves to be set aside and the application filed by the petitioners deserve to be allowed.

On the other hand learned counsel representing the respondent-complainant has opposed the prayer made by learned counsel for the petitioners. It has been submitted that the impugned orders do not suffer from any illegality and the petitioners would get sufficient opportunity to cross-examine the witnesses at a subsequent stage as has been rightly held by the Courts.

I have considered the submissions made by learned counsel for the parties and find that the view taken by the Courts below is not sustainable. Admittedly, the complainant Avtar Singh appeared as CW-1 and was cross examined. Subsequently CW-3 tendered in evidence certain

documents with regard to which the petitioners wanted to cross-examine the complainant Avtar Singh. In the considered opinion of this Court, despite the fact that the petitioners may be having knowledge of these documents even prior in time, they should have been given an opportunity to cross-examine the complainant regarding this aspect. This opportunity deserved to be granted before the consideration on the issue of framing of charges. In any case, it is always in the interest of justice that proper examination of the witnesses should be conducted before any decision is arrived at whether with regard to framing of charges or otherwise. The granting of one opportunity to the petitioner to cross-examine the complainant would not have made any difference.

In view of the above, the present revision petition is allowed. The impugned orders are set aside and the application filed by the petitioners under Section 311Cr.P.C. is allowed. The petitioners shall be granted one effective opportunity to cross-examine the complainant Avtar Singh with regard to the documents produced on record by CW-3. The parties shall appear before the trial Court on 28.04.2023. The trial Court may then fix a date as per its convenience for recalling the complainant Avtar Singh.

19.04.2023
himanshu

(VIKRAM AGGARWAL)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No