

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

129

CRM-M-51567-2023
Date of decision: 11.10.2023

Dinesh Chander @ Dinesh Chandra MeghwalPetitioner

Versus

State of PunjabRespondent

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present : Mr. Gurmeet Singh Saini, Advocate
for the petitioner.

MANJARI NEHRU KAUL, J. (ORAL)

1. The petitioner is seeking setting aside of order dated 21.09.2023 passed by learned Judge, Special Court, Ferozepur (Annexure P-3) in case FIR No.0130 dated 24.12.2018 under Sections 18, 61 of the NDPS Act registered at Police Station Kulgari, District Ferozepur, whereby his application dated 19.09.2023 for summoning witnesses Joginder Singh SI (retired) and ASI Parvinder Singh, CIA Staff Ferozepur, has been dismissed.

2. Learned counsel for the petitioner contends that the Trial Court had erroneously dismissed his application to summon two witnesses i.e. Sub Inspector Joginder Singh (retired) and ASI Parvinder Singh of CIA Staff, Ferozepur. He further argues that both these witnesses were essential to establish the defence of the petitioner since he had been falsely implicated in the instant case. It has also been submitted that as per the version of the prosecution, Sub Inspector

Joginder Singh, who was a part of the police party, had prepared only one document i.e. Ex.P1 Ruqa while all the other documents had been prepared by the investigating officer Kulwant Singh and his team. During cross-examination, Sub Inspector Joginder Singh had stated that Ruqa had been sent by ASI Parvinder Singh. However, a perusal of the Ruqa Ex.P1 and recovery memo Ex.P5 reveals that they had been written in the same hand writing, by the same person. Thus, it contradicts the claim of the prosecution that only one document i.e. Ruqa Ex.P1 was prepared by the police party of Sub Inspector Joginder Singh. It has been further argued that summoning of these witnesses is necessary so that the petitioner gets a fair opportunity to prove his false implication in the case in hand.

3. I have heard learned counsel and perused the relevant material on record.

4. The power to summon any individual or recall a previously examined witness is invoked by the Court when it deems that his/their testimony would be indispensable for the just decision of a case. A perusal of the file reveals that Sub Inspector Joginder Singh while stepping into the witness box as PW1 proved Ruqa Ex.P1, copy of FIR Ex.P2 and endorsement on the Ruqa Ex.P3.

5. Once Sub Inspector Joginder Singh has been examined and cross-examined extensively as a prosecution witness, the provisions of Cr.P.C. would preclude him from being examined as a defence witness. Hon'ble the Supreme Court in *State of Madhya Pradesh Vs. Badri Yadav : 2006 (9) SCC 549* has categorically held as under:-

“12. In this case the application under Section 311 CrPC for recalling PW 8 and PW 9 and re-examining them was

rejected by the court on 2-9-1994. Therefore, the question with regard to recalling PW 8 and PW 9 and re-examining them stood closed. There is no provision in the Code of Criminal Procedure that by filing affidavit the witnesses examined as PWs (PW 8 and PW 9 in this case) could be juxtaposed as DW 1 and DW 2 and be examined as defence witnesses on behalf of the accused.

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14. Section 233 itself deals with entering upon defence by the accused. The application for recalling and re-examining persons already examined, as provided under Section 311 CrPC, was already rejected. The power to summon any person as a witness or recall and re-examine any person already examined is the discretionary power of the court in case such evidence appears to it to be essential for a just decision of the case. Under Section 233 CrPC the accused can enter upon defence and he can apply for the issue of any process for compelling the attendance of any witness in his defence. The provisions of sub-section (3) of Section 233 cannot be understood as compelling the attendance of any prosecution witness examined, cross-examined and discharged to be juxtaposed as a defence witness. In the present case PW 8 and PW 9 were juxtaposed as DW 1 and DW 2. This situation is not one what was contemplated by sub-section (3) of Section 233 CrPC.”

6. Furthermore, it would be pertinent to notice that ASI Parvinder Singh, though, did not step into the witness box, however, it has been held by Hon'ble the Supreme Court in a catena of judgments that the prosecution cannot be compelled to examine all the witnesses or any witness, it does not wish to examine. The petitioner has failed to satisfy this Court as to why the testimony of ASI Parvinder Singh would be necessitated moreso when the recovery memo Ex.P5, memo of arrest Ex.P7, memo of intimation Ex.P8 and rough site plan Ex.P9 have already been proved during the testimony of ASI Satpal Singh, who stepped into the witness box as PW2.

7. In the aforementioned facts and circumstances, this Court does not find any merit in the instant petition which stands dismissed accordingly.

11.10.2023

(MANJARI NEHRU KAUL)
JUDGE

Vinay

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No