

CRR-2564-2023

2023:PHHC:142607

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

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CRR-2564-2023

Date of Decision : **November 08, 2023**

SUKHJINDER SINGH @ SUKHA

.....Petitioner

VERSUS

STATE OF PUNJAB AND ANOTHER

.....Respondents

CORAM: HON'BLE MR. JUSTICE KULDEEP TIWARI

Present : Mr. Monty Goyal, Advocate
for the petitioner.

KULDEEP TIWARI. J.

1. The petitioner, who is facing trial in FIR No. 144 dated 14.10.2018, under Sections 18, 25 of the Narcotic Drugs and Psychotropic Substances Act, 1985, Police Station Sadar Raikot, District Ludhiana, Punjab, has filed the instant revision petition to throw a challenge to the order dated 4.10.2023, whereby, his application to re-examine witness DW7-Govind Ram, Nodel Officer, Bharti Airtel Ltd., was rejected.

2. The above witness was examined on 15.5.2023, as defence witness and he has brought on record the subscriber details of some of the mobile numbers, customer application form and certificate under Section 65B of the Indian Evidence Act. He was put to cross-examination by the Additional Public Prosecutor for the State.

3. At the last stage of the trial, the accused-petitioner moved an application under Section 311 Cr.P.C. seeking permission from the trial

Court to recall the above witness on the ground that due to oversight, the call details and the tower locations from 13.10.2018 to 15.10.2018 of mobile numbers 99157-00058, 98725-40521, 81462-00443, 97794-16100 and 99157-00058 were not brought by the witness and, therefore, he may be re-examined as these documents are just and necessary for the decision of the case.

4. The learned trial Court considering that the trial is pending since 2019 and the instant application is nothing but an attempt to fill up the lacunae, therefore, dismissed the application vide impugned order dated 4.10.2023.

5. Learned counsel for the petitioner has vociferously submitted that the Court can summon any person for the purpose of recalling or re-examining at any stage of the trial and infact the documents which were summoned through this witness were not brought by him, therefore, it was the duty of the trial Court to re-examine the above witness. He has placed reliance upon the provisions of Section 311 Cr.P.C., which reads as under:-

“311. Power to summon material witness, or examine person present. Any Court may, at any stage of any inquiry, trial or other proceeding under this Code, summon 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.”

6. This Court has examined the entire record.
7. The powers of the trial Court to re-examine any witness at any stage of the trial is not under dispute. This issue is no more *res-integra* that the trial Court has power to recall any witness or witnesses already examined or to summon any witness, even if the evidence is closed, for as long as the trial is pending. However, these provisions cannot be asked to invoke with an intention to delay the trial or to fill up the lacunae.
8. The contention of the learned counsel for the petitioner that the defence witness due to an oversight has not brought the summoned record, does not find support from the record. A perusal of the statement of DW7, makes it clear that he has brought the summoned record and no objection whatsoever was raised by the learned counsel for the petitioner-accused. The relevant extract of the statement of DW7 reads as under:-

“State that today I have brought the summoned record of Mobile No. 9915700058 and 9872540521 and 8146200443 and subscriber detail of mobile No.9779416100. Customer application form (CAF) of mobile no.9915700058 and 9872540521 and 8146200443 are Ex.DW7/1 to Ex.DW7/9 and subscriber detail of mobile no.9779416100 is Ex.DW7/10. Certificate u/s 65B of Indian Evidence Act is Ex.DW7/11. Above said record are printed by me from the system in the Office, which is correct. I did not temper it nor I allow to any person for tempering the same.

Xxxxxxx by Ld. APP for the State.

I do not know the owners of mobile phone/sim card personally. It is wrong to suggest that I have deposed falsely.”

9. The above statement clearly postulates that the defence witness has brought all summoned record. Therefore, it seems that the present application has been filed with a malafide intention only to delay the disposal of the trial which infact is now fixed for defence and arguments.

10. Learned counsel for the petitioner is unable to point out any perversity or illegality in the impugned order passed by the learned trial Court. Therefore, this Court refrains to exercise its revisional powers to interfere in the impugned order dated 4.10.2023.

11. In sequel, the instant revision petition being bereft of merits is, hereby, dismissed.

(KULDEEP TIWARI)
JUDGE

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