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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH**CRR-2882-2022****Date of decision: 10.10.2023**

Manoj Kumar

....Petitioner

versus

State of Haryana

....Respondent

CORAM: HON'BLE MR. JUSTICE ARUN MONGA**Present:-** Mr. Karan Garg, Advocate for petitioner.

Ms. Svaleen Jaswal, Addl. A.G. Haryana.

ARUN MONGA, J. (ORAL)

1. Petitioner herein has impugned an order dated December 12, 2022, passed by the learned Additional District Judge, Rohtak vide which his application dated December 12, 2022, filed under Section 311 Cr.P.C to recall and examine witnesses PW-1, PW-2, PW-9, and PW-10, was dismissed .

2. Succinct facts are as follows:

2.1 As per the FIR, secret information was received that Manoj @ Bittu (petitioner) had stored a large quantity of intoxicant medicines in a room within his house and was selling them. A raid was conducted, resulting in the petitioner's apprehension. The search of the room yielded 18,144 capsules of Spasmo Proxyvon (batch No. JT10739), 1008 capsules of Spasmo Proxyvon (batch No. JT10637), 5328 capsules of Spas Core-von, 1135 bottles of Onerex Syrup, and 2400 tablets of Alprasaft 0.5. Subsequent investigation led to the formal registration of the FIR.

2.2. After completing the investigation, a challan was presented before the learned trial Court. Various witnesses were examined by the prosecution, and they were cross-examined by the defense counsel. However, the petitioner moved an application under Section 311 Cr.P.C seeking permission to recall the witnesses,

namely, PW-1 H.C. Kuldeep Singh, PW-2 S.I. Azad Singh, PW-9 E.C.I. Mukesh Kumar, and PW-10 C.T. Harpal, for further cross-examination. This application was dismissed vide impugned order dated December 12, 2022. Hence the instant petition.

3. The learned counsel for the petitioner argues that the petitioner has been falsely implicated in FIR No. 344 dated November 20, 2018, registered under Sections 21 and 22 of NDPS Act, 1985, at Police Station PGIMS Rohtak, District Rohtak. It is further contended that the premises where the recovery was made are not exclusively possessed by the petitioner, as he resides there with his two brothers and their respective families. The effective cross-examination of the aforementioned witnesses is crucial to determine whether the alleged recovery was from the conscious possession of the petitioner.

4. In contrast, the learned State counsel opposes the petitioner and asserts that the trial Court rightly dismissed the petitioner's application.

5. After hearing both counsels and reviewing the case file, it is evident that Section 311 of Cr.P.C. grants discretionary power to the Court, to be exercised judiciously for strong and valid reasons and with caution. The Supreme Court's observations in the case of **"J.K. International Vs. State (Government of NCT of Delhi)"** emphasize that this power should not be dismissed solely on the grounds of filling prosecution's loopholes.

6. It is fundamental that procedure should serve justice and not take precedence over substantive justice. Litigants have the valuable right to establish their cases through evidence unless they deliberately fail to present it. In this case, denying the petitioner an effective opportunity to lead evidence would cause prejudice. Hence, to ensure a just decision, it is appropriate to grant the petitioner

one opportunity to cross-examine PW-1 H.C. Kuldeep Singh, PW-2 S.I. Azad Singh, PW-9 E.C.I. Mukesh Kumar, and PW-10 C.T. Harpal.

7. Accordingly, this petition is allowed, and the impugned order dated December 12, 2022, is set aside. The learned trial Court is directed to provide one effective opportunity to the petitioner for the cross-examination of the aforementioned witnesses.

8. Pending applications, if any, shall also be disposed of accordingly.

(ARUN MONGA)
JUDGE

10.10.2023
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Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No