

Neutral Citation No.2023:PHHC:156203

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

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CRR No.2713 of 2023 (O&M)
Date of decision: 05.12.2023

Makhan @ Makhandeen

... Petitioner

Vs.

State of Punjab and another

... Respondents

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present:- Mr. Manuj Nagrath, Advocate,
for the petitioner.

MANISHA BATRA, J.

1. The petitioner is aggrieved by the order dated 22.08.2023 passed by the Court of learned Additional Sessions Judge, Gurdaspur in Sessions case No.46 of 2022 titled as *State v. Makhan @ Makhandeen* whereby the application filed by him under Section 311 of Cr.P.C. for recalling two witnesses, PW-1 "M" (name withheld) and PW-2 "J" (name withheld) for the purpose of their cross-examination by him, were ordered to be dismissed.

2. Brief facts relevant for the purpose of disposal of this petition are that the petitioner is nominated as one of the accused in FIR No.118 dated 27.11.2021 registered under Sections 363/365/341/506/148/149 IPC at Police Station Sri Hargobindpur, District Batala. Offence under Section 376-D of IPC was added later on in this case. He is facing trial before learned trial Court. Two of the material witnesses i.e. PW-1 "M"

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who is the complainant and PW-2 “J” i.e. the victim/prosecutrix had been examined and cross-examined before the trial Court. Thereafter, the petitioner filed an application before the trial Court seeking further cross-examination of these witnesses. Copy of the application as filed before learned trial Court has been placed on record as Annexure P-5 which reveals that the recalling of these witnesses was sought on the ground that some important facts could not be put forth to these witnesses while conducting their cross-examination and their further cross-examination was necessary to ascertain the truth in the matter.

3. The learned trial Court by passing the impugned order, has dismissed this application by observing that it was filed by taking vague pleas, that the witnesses PW-1 and PW-2 had been cross-examined at length and by further observing that the application appeared to have been filed to delay the matter.

4. Learned counsel for the petitioner has argued that the further cross-examination of PW-1 and PW-2 was very material as certain important questions could not be put to these witnesses while cross-examining them earlier and the truth could be ascertained only by cross-examining them again. He has argued that without giving any proper opportunity to the petitioner, the learned trial Court dismissed the application by passing a non-speaking order and, therefore, he has urged that the impugned order is liable to be set aside.

5. Under Section 311 of Cr.P.C., the Court is undoubtedly having

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extraordinary powers to allow examining, recalling or re-examination of any person or a witness, if evidence of such person appears to it to be essential for just decision of the case. It is well settled that the powers conferred under Section 311 of Cr.P.C. should be invoked in extraordinary circumstances and only to meet the ends of justice. The power is to be exercised only for strong and valid reasons and it should be exercised with great caution and circumspection. The power under this provision is not to be exercised if the Court finds that the application has been filed as an abuse of process of law. Reference in this context can be made to the observations made by the Apex Court in **Dr. Rajesh Talwar and another v. CBI and another**, 2014 (1) SCC (Criminal) 493 and **Swapan Kumar Chatterjee v. Central Bureau of Investigation**, 2019 (2) R.C.R. (Criminal) 162.

6. In the instant case, the petitioner has placed on record copies of statements of PW-1 and PW-2 as recorded before trial Court A perusal of the same reveals that PW-2 was examined and cross-examined on 02.12.2022 whereas PW-1 had been examined in chief on the same date but his cross-examination was deferred on request of learned counsel for the present petitioner and he was cross-examined subsequently on 03.01.2023. Due opportunity of cross-examination is shown to have been given to the petitioner for effecting cross-examination of both these witnesses. The application under Section 311 of Cr.P.C. was filed at a subsequent stage. No strong and valid reasons whatsoever have been given by the petitioner for recalling PW-1 and PW-2 for their further

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cross-examination. The mere plea that some important facts were not put forth to these witnesses is not sufficient and it was required and expected from him to disclose as to what were those important facts could not be asked to these witnesses. Even before this Court, learned counsel for the petitioner has failed to disclose as to what facts were required to be put to PW-1 and PW-2 to ascertain the truth. It is also not the version of the petitioner that such facts were not known to him at the time of cross-examining these witnesses. In the absence of any satisfactory reason having been given by the petitioner for seeking further cross-examination of PW-1 and PW-2 and further in the absence of any plea as taken by him that any prejudice would be caused to him if the above mentioned witnesses are not recalled and re-examined, I see no reason to interfere with the order as passed by learned trial Court. Accordingly, the petition is dismissed.

7. Miscellaneous application(s), if any, also stand disposed of.

05.12.2023
manju

(MANISHA BATRA)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No