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

CRM-M-10621-2022
Date of Decision:- 17.09.2024

VIKAS GUPTAPetitioner

Vs.

STATE OF PUNJAB & ANOTHER ...Respondents

CORAM:-HON'BLE MRS. JUSTICE AMARJOT BHATTI

Present:- Mr. Akhil Kashyap, Advocate for petitioner.

Mr. Neeraj Madaan, Sr. DAG, Punjab.

AMARJOT BHATTI, J. (Oral)

1. Petitioner Vikas Gupta filed petition under Section 482 Cr.P.C. for setting aside order dated 30.09.2021 (P-6) passed by learned Judicial Magistrate 1st Class, Moga vide which application under Section 311 Cr.P.C. has been allowed for cross examination of Neha Madan (PW-10) in FIR No.05 dated 17.01.2014 under Sections 420, 465, 467, 468 and 471 IPC (Annexure P-1).

2. Learned counsel for petitioner argued that petitioner is facing trial in the Court of Judicial Magistrate 1st Class, Moga in the aforesaid FIR in which statement of Neha Madan (PW-10) was recorded. Said statement is Annexure P-2. Cross-examination of said witness was conducted by counsel representing accused and at that stage learned PP representing State requested for re-examination of the witness which was accordingly



allowed. Thereafter, prosecution filed application under Section 311 Cr.P.C. (Annexure P-4) for cross-examination of Neha Madan (PW-10). It was contested by petitioner by filing reply (Annexure P-5) and it was allowed vide order dated 30.09.2021 (Annexure P-6). Against this order, revision was preferred but it was declined being not maintainable vide judgment dated 14.01.2022 in Criminal Revision No.48 of 2021 (Annexure P-7). It is pointed out that prosecution was given full opportunity to re-examine witness. She was never declared hostile. Therefore, now she cannot be put to cross-examination. It is prayed that impugned order dated 30.09.2021 (Annexure P-6) is not on sound footing and it is liable to be set aside.

3. On the other hand, learned counsel representing State argued that Neha Madan (PW-10) changed her version during cross-examination. She has given contradictory stand to her version recorded in examination-in-chief as well as her version recorded under Section 161 Cr.P.C. Therefore, cross-examination of this witness is required in order to bring truth before the learned trial Court. Therefore, objection raised by learned counsel for petitioner is without any basis.

4. I have considered the arguments and have gone through the record. Statement of Neha Madan, Manager, Bank of Baroda, Fatehabad Road, Agra was recorded as PW-10 which is Annexure P-2. Her examination-in-chief was recorded on 09.01.2020 and she was partially cross-examined. During her examination in chief she alleged that responsibility regarding clearance of cheque is of the passing official Vikas Gupta of J&K Bank. However, when she was cross-examined on 06.02.2020 (Annexure P-3) she claimed that she does not know Vikas



Gupta. She further deposed regarding presentation of cheque and alleged that she has not made any allegations against Vikas Gupta upto date as she did not know him. On the request of learned APP, witness was re-examined and thereafter counsel for accused was also given an opportunity to cross-examine the said witness and it was treated as 'Nil'. Therefore, complete statement of this witness was recorded on 06.02.2020.

5. Perusal of statement of Neha Madan (PW-10) indicates that she has changed her version when she was called for cross-examination. Learned counsel representing State rightly pointed out that witness is required to be confronted with her statement recorded under Section 161 Cr.P.C. Considering the factual position, in order to bring truth before the trial Court, cross-examination of this witness is required. Even otherwise under the provision of Section 311 Cr.P.C. the Court can summon any witness at any stage who is relevant to dispose of matter in controversy. Section 311 Cr.P.C. provides 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.

Consequently, I do not find any reason to interfere in the impugned order dated 30.09.2021 (Annexure P-6) and the same is,



accordingly, upheld. Petition preferred by petitioner is, accordingly, dismissed.

6. Pending miscellaneous application(s), if any, stand disposed of accordingly.

17.09.2024
snd

(AMARJOT BHATTI)
JUDGE

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