

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

2024:PHHC:062568
CRR-833-2024 (O&M)
Date of Decision: May 06, 2024

Manohar Singh alias Raju and others ...Petitioners

Versus

State of Punjab ...Respondent

CORAM: HON'BLE MR. JUSTICE DEEPAK GUPTA

Present:- Mr. S.K. Choudhary, Advocate for the petitioners.

DEEPAK GUPTA, J.(Oral)

CRM-19324-2024

This is an application moved by the petitioner to place on record orders dated 28.10.2022 and 09.12.2023 as Annexure P-7.

Allowed.

Annexure P-7 is taken on record.

Main Case

Petitioners are facing trial before the Court of learned Judicial Magistrate 1st Class, Pathankot, in case FIR No.46 of 2017, under Sections 325, 323, 148, 149 of IPC (Annexure P-1), registered at Police Station Sadar Pathankot. During proceedings, statement of 08 prosecution witnesses were recorded as per details given in para No.4 of the petition. The application was moved by the petitioners for recalling PW2 – Kiran Bala and PW7 – Dimple under Section 311 Cr.P.C. for their further cross-examination. That application has been dismissed by the Trial Court vide impugned order dated 21.03.2024.

2. Learned counsel for the petitioners contends although the examination-in-chief of the two witnesses, i.e. PW2- Kiran Bala and PW7 –

Dimple was recorded, but their cross-examination was deferred for one or

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the other reason; that petitioners did not get opportunity later on, so as to cross-examine them and therefore, impugned order is not sustainable in the eyes of law.

3. Notice of motion.

4. Mr. Amandeep Singh, DAG, Punjab accepts notice on behalf of respondent-State.

5. Learned State counsel opposed the petition by submitting that defence counsel was provided proper opportunity to cross-examine the two witnesses and that the only motive now to move the application is to fill in the lacunae. It is further submitted that statements of accused under Section 313 Cr.P.C. have already been recorded, in which also no such infirmity was pointed out.

6. Heard.

7. A perusal of the paper book would reveal that examination-in-chief of PW2 – Kiran Bala was recorded on 23.10.2018. On that day, her cross-examination was deferred as the Court time was over. Her further examination was recorded on 09.12.2019. Further cross-examination was deferred on that day as objection of the piecemeal was raised by learned defence counsel. On 28.10.2022, said PW2 – Kiran Bala again appeared for her cross-examination, but no cross-examination was conducted despite opportunity given to the defence counsel Shri Amit Verma, who was present in the Court. Even the order dated 28.10.2022 (Annexure P-7) passed by learned Judicial Magistrate 1st Class, Pathankot, would reveal that PW 2 – Kiran Bala was present and examined. The order was passed in the presence of Shri Amit Verma, defence counsel representing the accused-petitioners.

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8. Similarly, PW7 – Dimple was examined on 09.08.2023. Opportunity to cross-examine the witness was given. However, Shri Amit Verma, Advocate representing the accused-petitioners, did not conduct the cross-examination and opportunity given was treated nil. This fact is also mentioned in the order dated 09.02.2023 (part of Annexure P-7), in which it is clearly mentioned that PW 7 is present and examined.

9. In view of the aforesaid facts and circumstances, when due opportunity had been provided to the defence counsel representing the petitioners-accused, so as to cross-examine the witnesses, petitioners cannot now raise the plea of not getting the proper opportunity.

10. This Court does not find any illegality in the impugned order dated 21.03.2024, whereby application of the petitioners under Section 311 Cr.P.C. has been dismissed.

No merits. Dismissed.

May 06, 2024

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(DEEPAK GUPTA)
JUDGE

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