



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

**CRM-M-25546-2024
DECIDED ON: 20.05.2024**

SANDEEP SINGH ALIAS SUNNY

.....PETITIONER

VERSUS

STATE OF PUNJAB

.....RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. V. K. Sandhir, Advocate
for the petitioner.

SANDEEP MOUDGIL, J (ORAL)

1. The instant petition has been preferred under Section 482 Cr.P.C. seeking setting aside of the order dated 18.03.2024 (Annexure P-5), whereby the application of the petitioner under Section 311 Cr.P.C., dated 19.05.2022 (Annexure P-3) for recalling of PW2 (HC Sahib Singh) & PW3 (SI Kuldeep Singh) in FIR No.006, dated 04.07.2018 (Annexure P-1) under Sections 21, 22 of NDPS Act, 1985, registered at Police Station Verka for the purpose of cross examination, who could not be cross-examined due to non-appearance of the counsel, has been dismissed.

2. Learned counsel for the petitioner contends that the application under Section 311 Cr.P.C. for recalling of witnesses i.e. PW-2 and PW-3 was preferred on 19.05.2022 before the trial Court which has been adjudicated upon vide impugned order by the Judge Special Court, Amritsar dated 18.03.2024 in a case under the NDPS Act preferred on behalf of the present petitioner.

3. Notice of motion.

4. On the asking of the Court, Mr. Rajiv Verma, DAG, Punjab accepts notice on behalf of the respondent-State and submits that it is to be seen whether any opportunity was given to the petitioner-accused or not and prosecution has already examined three witnesses including the two in question i.e. PW-2 and PW-3 though he could not controvert the fact that there are nine prosecution witnesses cited and still material evidence is yet to be lead by the prosecution in the form of Chemical Examiner Report apart from other evidence.

5. This Court can easily cull out from the submissions made on behalf of both the parties that trial Court has erred in law while dismissing the application under Section 311 Cr.P.C. for recalling witness sought by the accused for cross-examination since there was opportunity recorded as Nil on account of non-appearance of the counsel for the accused-petitioner.

6. In the light of these factual aspect available on record of the trial Court, the argument raised on behalf of learned State counsel does not hold good and therefore, this order is bad and suffers from material infirmity particularly in view of non-providing appropriate reasonable opportunity to the petitioner to put forth his defence by cross-examining the prosecution witnesses in the instant case.

7. Even otherwise keeping in mind the another aspect, it is only 3 PWs who have been examined out of which PW-2 and PW-3 have been partially examined and six other PWs are yet to be brought to the witness-box by the prosecution itself and the trial Court has consumed considerably long time for disposing of Section 311 Cr.P.C. since it was filed on

19.05.2022 to which reply on behalf of the State was filed on 13.12.2022 and the order came to be passed on 18.03.2024, it is also not of any use to argue on behalf of the prosecution that there is any intent on behalf of accused-petitioner to delay the trial proceedings.

8. Moreover, in “*Hoffman Andreas vs. Inspector of Customs, Amritsar*”, (2000) 10 SCC 430, it has been observed that the counsel who was conducting the case was ill and died during the progress of the trial. The new counsel sought recall on the ground that the witnesses could not be cross-examined on account of illness of the counsel. This prayer was allowed in peculiar circumstances with the observation that normally a closed trial could not be reopened but illness and death of the counsel was in the facts and circumstances considered to be a valid ground for recall of witnesses. It was held that:-

"Normally, at this late stage, we would be disinclined to open up a closed trial once again. But we are persuaded to consider it in this case on account of the unfortunate development that took place during trial i.e. the passing away of the defence counsel midway of the trial. The counsel who was engaged for defending the appellant had cross-examined the witnesses but he could not complete the trial because of his death. When the new counsel took up the matter he would certainly be under the disadvantage that he could not ascertain from the erstwhile counsel as to the scheme of the defence strategy which the predeceased advocate had in mind or as to why he had not put further questions on certain aspects. In such circumstances, if the new counsel thought to have the material witnesses further examined the Court could adopt latitude and a liberal view in the interest of justice,

particularly when the Court has unbridled powers in the matter as enshrined in Section 311 of the Code. After all the trial is basically for the prisoners and courts should afford the opportunity to them in the fairest manner possible."

9. The above observations cannot be read as laying down any inflexible rule to routinely permit a recall on the ground that cross-examination was not proper for reasons attributable to a counsel. While advancement of justice remains the prime object of law, it cannot be understood that recall can be allowed for the asking or reasons related to mere convenience. It has normally to be presumed that the counsel conducting a case is competent particularly when a counsel is appointed by choice of a litigant. Taken to its logical end, the principle that a retrial must follow on every change of a counsel, can have serious consequences on conduct of trials and the criminal justice system. However, in the present case, giving one opportunity to the defence counsel to examine the PWs would only help in taking it to a logical conclusion.

10. In the light of aforesaid discussions and submissions made by learned counsel for the respective parties, the order dated 18.03.2024 is set aside.

11. It is, however, made clear that both the witnesses of the prosecution namely HC Sahib Singh-PW-2 and SI Kuldeep Singh-PW-3 shall be cross-examined by the petitioner on the date already fixed before the trial Court on 31.05.2024.

12. It would be the sole responsibility of the petitioner to bring this order on record before the trial Court as soon as possible for recalling of the witnesses of whom the cross-examination have been sought on his behalf.

13.

In the aforesaid terms, the present petition stands allowed.
14.

However, learned counsel for the petitioner has pointed out that on account of Lok Sabha Election scheduled in the State of Punjab for 01.06.2024, there may be a hitch for the prosecution to produce these two police officials who might be on election duty.
15.

In that eventuality alone, the trial Court may fix one more date for the said purpose but no further opportunity should be given on any other account.

20.05.2024
Poonam Negi

(SANDEEP MOUDGIL)
JUDGE

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