

IN THE HIGH COURT OF PUNJAB AND HARYANA AT  
CHANDIGARH

SR. No.258

CRM-M-37464-2019  
Date of decision:30.01.2024

Amanpreet Singh @ Sunny

...Petitioner

Versus

State of Punjab and another

...Respondent(s)

CORAM: HON’BLE MR. JUSTICE N.S. SHEKHAWAT

Present: Mr. Pankaj Bali, Advocate for the petitioner.

Mr. I.P.S. Sabharwal, DAG, Punjab.

N.S. SHEKHAWAT, J.

1. The petitioner has filed the present petition under Section 482 Cr.P.C. with a prayer to set aside the order dated 21.02.2019 (Annexure P-8) passed by Chief Judicial Magistrate, Ludhiana, whereby an application filed by the present petitioner for recalling PW-1 ASI Surinder Singh for cross-examination, has been ordered to be dismissed.
2. Learned counsel for the petitioner submitted that on the basis of the complaint moved by ASI Surinder Singh, respondent No.2, one FIR No. 172 dated 18.06.2014 under Sections 379/411 IPC was ordered to be registered against the petitioner at Police Station, Focal Point, Ludhiana. After conclusion of the investigation, the challan was presented against the petitioner in the court. Vide charge-sheet dated 23.01.2015, the charge was ordered to be framed against the present petitioner and trial formally started before the trial Court. During the prosecution evidence, ASI Surinder Singh appeared as PW-1 on 08.09.2016 and his remaining examination-in-chief was deferred. Thereafter, the said witness failed to appear before the court for a period of more than two years

for his remaining examination-in-chief and finally appeared on 13.11.2018. On 13.11.2018, his remaining examination-in-chief was completed. However, the counsel for the petitioner was not available in the court on the said date to cross-examine the said witness and on the request of the petitioner, the case was adjourned to 17.12.2018. Since the earlier counsel was not available on 17.12.2018, the petitioner had to engage a new counsel, namely, Mr. Charanjit Singh, Advocate for conducting the cross-examination. However, when the petitioner appeared with the new counsel before the trial Court, the petitioner came to know that on 13.11.2018, the statement of PW-1 ASI Surinder Singh was already recorded and it was wrongly shown that the opportunity was given to the defence counsel, but no cross-examination was conducted. The petitioner moved an application dated 10.12.2018 (Annexure P-6) and requested the trial Court to recall PW-1 ASI Surinder Singh for cross-examination, as the petitioner was deprived of his valuable right to cross-examine the most material witness in the trial against him. Vide impugned order (Annexure P-8), the court of Chief Judicial Magistrate, Ludhiana dismissed the said application. The petitioner also filed a revision petition before the Sessions Judge, Ludhiana and vide order dated 22.08.2019 (Annexure P-9), the Court of Additional Sessions Judge, Ludhiana held that the impugned order passed by the CJM, Ludhiana was an interlocutory order and the revision against the said order was held to be not maintainable. Aggrieved of the said order, the petitioner has filed the present petition before this Court.

3. On the other hand, learned State Counsel has vehemently opposed the submissions made by learned counsel for the petitioner on the ground that the petitioner intentionally did not cross-examine PW-1 ASI Surinder Singh and no opportunity should be granted to him to cross-examine the said witness any further and the present petition is nothing but a dilatory tactics on the part of the present petitioner/accused. Still further, respondent No.2 appeared in person in the present case and submitted that he had no objection in case the prayer made

by the petitioner is ordered to be allowed in the present case.

4. After hearing the learned counsel for the parties and perusing the case file minutely, I am of the considered opinion that the present petition deserves to be allowed for the following more than one reasons.

5. In the present case, it is apparent that PW-1 Surinder Singh was the most material witness of the prosecution and he had appeared for recording his remaining examination-in-chief after a gap of more than two years. However, no cross-examination was conducted on the said witness and it has been mentioned that the opportunity was given to the learned defence counsel, however there was no cross-examination. Even in the order dated 13.11.2018, it has nowhere been mentioned by the CJM, Ludhiana that no cross-examination was conducted by the defence counsel, despite granting an opportunity to him. Even otherwise in the opinion of this Court, PW-1 ASI Surinder Singh was the most material witness of the prosecution and the provision of Section 311 Cr.P.C. imposes an obligation on this Court to recall and re-examine any such person, if his evidence appears to be essential to the just decision of the case. Further, respondent No.2/complainant has not opposed the prayer made by learned counsel for the petitioner and submitted that he was ready to appear as a witness before the trial Court again.

6. In view of the above discussion, the present petition is allowed and the order dated 21.02.2019 (Annexure P-8) is set aside. The trial Court is directed to recall PW-1 ASI Surinder Singh and one effective opportunity shall be granted to the petitioner to cross-examine the said witness.

**30.01.2024**  
mks

**(N.S. SHEKHAWAT)**  
**JUDGE**

Whether Speaking/Reasoned: YES / NO  
Whether Reportable: YES / NO