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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-44036-2024

Date of Decision:- 06.09.2024

MANGAT RAI

...Petitioner

Vs.

STATE OF PUNJAB

...Respondent

CORAM:- HON'BLE MRS. JUSTICE AMARJOT BHATTI

Present:- Mr. Anurag Arora, Advocate for petitioner.

Mr. Kewal Singh, Addl. A.G. Punjab.

AMARJOT BHATTI, J.

1. Present petitioner has filed instant petition for quashing of order dated 11.06.2024 passed by Judicial Magistrate First Class, Jalandhar (P-8) vide which application filed by present petitioner/accused under Section 311 of Code of Criminal Procedure, 1973 for summoning and cross-examination of PW2 ASI Surinder Pal Singh and PW3 Retired Inspector Amrik Singh has been declined.

2. Learned counsel for petitioner pointed out that statements of prosecution witnesses ASI Surinder Pal Singh PW-2 and Retired Inspector Amrik Singh PW-3 were recorded in the absence of counsel for petitioner/accused. Counsel for accused was not well. Therefore, he got late in coming to the Court and by that time statements of aforesaid witnesses were concluded by writing crossing examination 'opportunity

given nil'. Perusal of para No.5 of impugned order dated 11.06.2024 further confirms the fact that counsel for accused had reached the Court late and by that time statements of witnesses were already concluded. It is submitted that cross-examination of these witnesses is material and application filed under Section 311 Cr.P.C. was wrongly rejected. Therefore, impugned order may be set aside and petitioner/accused may be given one opportunity to cross-examine these witnesses.

3. Notice of motion.

4. On asking of this Court, Mr. Kewal Singh, Addl. A.G. Punjab accepts notice on behalf of State. He pointed out that statements of witnesses ASI Surinder Pal Singh PW-2 and Retired Inspector Amrik Singh PW-3 were recorded on 18.01.2024. However, application under Section 311 Cr.P.C. was filed after a period of about one month. Due opportunity was given to accused for cross-examination of these witnesses. Ultimately, cross-examination was treated as 'Nil' and the case was adjourned. Impugned order dated 11.06.2024 passed by trial Court is fully justified and it does not require any interference.

5. I have considered the arguments and have perused impugned order dated 11.06.2024 (P-8). As per record, statements of ASI Surinder Pal Singh PW-2 and Retired Inspector- Amrik Singh PW-3 were recorded on 18.01.2024. Copy of zimni order Annexure P-3 indicates that counsel for accused was not present in the Court and only presence of accused is marked in person. Learned Presiding Officer did not mention time when the cross-examination of aforesaid witnesses was treated as 'Nil'. The

Magistrate could have waited for a reasonable time for the counsel for accused to conduct cross-examination of these witnesses. In para No.6 of the impugned order it is mentioned that counsel for accused had reached Court late. Cross-examination of a witness is material right to the accused to present his defence and the same cannot be curtailed. Trial Court was to give any adequate opportunity for cross-examination. Cross-examination of PW2 ASI Surinder Pal Singh and Retired Inspector Amrik Singh PW3 was closed by treating it as 'Nil' in hasty manner and the same was not reconsidered when application was filed under Section 311 Cr.P.C. Therefore, impugned order dated 11.06.2024 passed by learned Judicial Magistrate 1st Class, Jalandhar is not on sound footing and the same is accordingly set aside. Petitioner/accused is given one effective opportunity to cross-examine aforesaid witnesses ASI Surinder Pal Singh and Retired Inspector Amrik Singh PW-3 on their appearance on the date fixed by the trial Court.

6. Petition is, accordingly, disposed of.

7. Pending miscellaneous application(s), if any, stand disposed of accordingly as well.

(AMARJOT BHATTI)
JUDGE

06.09.2024

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Whether speaking/reasoned: Yes/No.

Whether reportable: Yes/No