



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

CRM-M-46645-2024
Date of decision: 18.09.2024

Ajay Kumar

...Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE KARAMJIT SINGH

Present: Mr. Arjunveer Sharma, Advocate for the petitioner.

Mr. J.S. Dhaliwal, AAG, Punjab.

KARAMJIT SINGH, J. (ORAL)

1. The present petition has been filed by the petitioner under Section 528 of BNSS 2023 seeking quashing of orders dated 16.11.2022, 01.09.2022 and 17.07.2023 (Annexure P-3) collectively, whereby cross examination of PW-1 HC Bua Singh, PW-2 ASI Baljeet Singh and PW-3 MHC Pawanjit Singh on behalf of the petitioner was treated as nill by the trial Court in criminal case State Vs. Ajay Kumar having FIR No.134 dated 09.10.2017 registered under Section 61 of Punjab Excise Act, at Police Station Moti Nagar, District Police Commissionerate, Ludhiana (Annexure P-5) and order dated 14.05.2024 Annexure P-4 passed by the learned trial Court whereby the application filed by the petitioner under Section 311 Cr.P.C. was dismissed and order dated 02.08.2024 Annexure P-5 passed by the Court of Additional Sessions Judge, Ludhiana whereby the revision petition filed by the petitioner against order Annexure P-4, was dismissed.

2. Counsel for the petitioner submits that legal aid counsel was

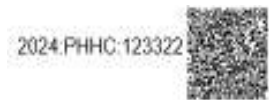


provided to the petitioner but the said counsel did not bother to cross examine PW-1, PW-2 and PW-3 and resultantly, cross examination of the said PWs on behalf of the petitioner was treated as nil. Counsel for the petitioner further submits that for the lapses committed by the free legal aid counsel, the petitioner cannot be allowed to suffer.

3. The present petition is resisted by the State counsel who submits that proper opportunity was given to the petitioner and his counsel to cross examine the concerned witnesses, but they did not cross examine PW-1, PW-2 and PW-3 and resultantly, their cross examination on behalf of the petitioner was treated as nil and there was no other option with the trial Court.

4. I have considered the submissions made by counsel for the parties.

5. As regarding prosecution witnesses namely PW-1 to PW-3, if they were not cross examined by the defence counsel, it will cause prejudice to the petitioner and their statements will be treated as unchallenged and the petitioner will suffer loss. It also appears that the petitioner was represented by legal aid counsel who was under obligation to cross examine the prosecution witnesses on behalf of the petitioner. In case, the legal aid counsel failed to perform his duty, petitioner cannot be allowed to suffer on account of any lapse committed by the said counsel. Further, in case no legal aid counsel was present on behalf of the petitioner at the relevant time, it was the duty of the trial Court to provide him proper legal aid counsel to cross examine the prosecution witnesses on behalf of the petitioner. It is settled position of law that proper opportunity is to be given to the accused



to defend himself and to cross examine the prosecution witnesses.

6. It is a well settled principle of law that while deciding under Section 311 Cr.P.C, the Court has wide power to allow such application in the interest of justice and to grant fair opportunity of trial to the accused.

7. Be that as it may, the present petition is hereby allowed and the impugned orders are set aside. The trial Court is directed to afford one factual opportunity to the petitioner to cross examine PW-1, PW-2 and PW-3 after ensuring that petitioner is properly represented by defence counsel/legal aid counsel.

8. The parties are directed to appear before the trial Court on the next date fixed in the trial and on that day, the trial Court will fix a date for cross examination of the aforesaid prosecution witnesses on behalf of the petitioner.

18.09.2024
Yogesh

(KARAMJIT SINGH)
JUDGE

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