



CRM-M-48741-2024

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

CRM-M-48741-2024
Decided on : 27.09.2024

Palwinder Kumar

..... Petitioner

Versus

State of Punjab and another

..... Respondents

CORAM : HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present : Ms. Amandeep Kaur, Advocate
for the petitioner.

Manjari Nehru Kaul, J.(Oral)

1. The petitioner-accused is seeking the quashing of the order dated 01.08.2024 (Annexure P-4) passed by learned Judicial Magistrate, Baba Bakala Sahib, District Amritsar vide which an application filed by him under Section 311 of Cr.P.C., was dismissed.
2. Learned counsel for the petitioner has argued that the learned Trial Court erred in dismissing the application under Section 311 of Cr.P.C. without appreciating the facts from the correct perspective. It is contended that the petitioner did not cross-examine the witnesses i.e. PW-2 Prem Singh, PW-3 Nirjan Singh, PW-4 ASI Somnath, PW-5 Natha Singh, PW-7 Sukhwinder Singh and PW-9 ASI Pal Singh, although the counsel for the other co-accused had already conducted the cross-examinations. Importantly, the petitioner



never made any concession before the learned Trial Court that he was not inclined in cross-examining these witnesses.

Learned counsel has further submitted that the petitioner will suffer severe prejudice due to this oversight, which was not of his own making. He has also contended that the cross-examination of these witnesses is crucial to prove the petitioner's defence, as he has been falsely implicated in the case. The petitioner, therefore, must be given a fair opportunity to demonstrate the falsity of the charges. It has still further been argued that the Trial Court had failed to exercise its discretion properly under Section 311 of Cr.PC by not recalling these witnesses, and by dismissing the application, it ignored the fact that the failure to cross-examine these six witnesses would severely prejudice the petitioner's case, leading to a miscarriage of justice.

3. Heard learned counsel for the petitioner and perused the material on record.

4. Section 311 of Cr.P.C. empowers the Court to summon or recall any person as a witness at any stage of inquiry, trial, or other proceedings. However, this discretion must be exercised judiciously, taking into account the specific circumstances of the case.

5. In the present case, the petitioner has sought to recall 06 witnesses for cross-examination under Section 311 of Cr.PC. A perusal of the material on record shows that the last prosecution



witness was examined and cross-examined on 30.11.2018 by the counsels representing the other co-accused. Although the co-accused had availed the opportunity to cross-examine these witnesses, the petitioner chose not to do so, despite being granted the same opportunity. Notably, the petitioner has not even claimed that he was absent or exempted during the examination of these witnesses.

6. Additionally, it is a matter of record that the petitioner, apart from the six witnesses mentioned in the application, did not cross-examine other witnesses, including SI Gurwinder Singh (PW-10), HC Balwinder Singh (PW-11), Jugraj Singh, ADGP Crime (PW-12), SI Surinder Singh (PW-13), and Ashwini Chaudhary (PW-14). Curiously, these witnesses have not been included in the petitioner's application, for reasons best known to the petitioner. Moreover, the prosecution's evidence was formally closed on 09.09.2021, and the statements of all the accused, including the petitioner, under Section 313 Cr.P.C., were recorded on 24.09.2021. During the defence evidence stage, the petitioner appeared as his own witness, and the case is now nearing its conclusion. The petitioner's claim that cross-examination is essential for a fair trial and is his right does not, by itself, suffice to invoke the provisions of Section 311 of Cr.PC, particularly in light of the unexplained and inordinate delay of six years in filing the application. The petitioner



has failed to provide a satisfactory explanation for the delay and has not justified why the application under Section 311 of Cr.PC was moved at such an advanced stage of the trial. Furthermore, the petitioner was granted multiple opportunities to cross-examine these witnesses, which he did not avail, despite the fact that the facts and witnesses in question were well within his knowledge from the outset.

7. This Court, therefore, concurs with the findings of the Lower Court that allowing this application at such a belated stage to recall six witnesses would effectively result in the reopening of the prosecution's evidence. The Court's duty to provide the petitioner with an opportunity for cross-examination has already been fulfilled in this case. Granting such applications at this stage would set a dangerous precedent, potentially leading to the misuse of the legal process in future cases.

8. In light of the aforementioned reasons, this Court finds no merit in the present petition and the same is hereby dismissed accordingly. However, it is made clear that anything observed hereinabove shall not be construed to be an expression of opinion on the merits of the case.

27.09.2024
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(MANJARI NEHRU KAUL)
JUDGE

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