

**CRR-2201-2024****-1-****IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.****Sr. No.114****Case No. : CRR-2201-2024****Decided On : November 13, 2024**

Shammi Kumar @ Shammi Petitioner

vs.

State of Punjab and another Respondents

CORAM : HON'BLE MR. JUSTICE GURBIR SINGH.

* * *

Present : Mr.Bikramjeet Singh Jatana, Advocate
for the petitioner.

Ms. Manjot Kaur, AAG, Punjab.

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GURBIR SINGH, J. :

1. Challenge in the present petition is to the order dated 06.09.2024, passed by learned Additional Sessions Judge, Mansa (for brevity – Trial Court), thereby summoning the application moved by the petitioner/accused under Section 311 Cr.P.C., for summoning respondent no.2/complainant for cross-examination, has been dismissed.

2. Brief facts, necessary for adjudication of the present petition, are that on the statement of respondent no.2/complainant, an FIR was registered against the petitioner and another co-accused namely Sourav Jaiswal @ Piyush. After completion of investigation, challan was presented, charges were framed and on 07.08.2023, examination-in-chief of respondent no.2/complainant was conducted. However, his cross-examination was not recorded and the learned Trial Court marked the cross-examination as



“Opportunity given – Nil.” The petitioner/accused then moved an application under Section 311 Cr.P.C. before the concerned Court for recalling respondent no.2/complainant for his cross-examination but the same was dismissed vide impugned order dated 06.09.2024. Aggrieved against the said order, the petitioner has approached this Court by way of the present petition.

3. Learned counsel for the petitioner has argued that on 07.08.2023, counsel for the petitioner was suffering from eye-flu and therefore, he could not conduct cross-examination of respondent no.2/complainant but the learned Trial Court failed to appreciate that respondent no.2/complainant is a material witness and if his cross-examination is not recorded, the petitioner would suffer a great loss. It has further been argued that petitioner’s counsel before the learned Trial Court never avoided the proceedings of the Court deliberately or intentionally but not even a single opportunity was afforded to him to cross-examine the complainant.

4. Pursuant to receipt of advance notice of the present petition, learned State Counsel, who is present to assist the Court, has argued that presence of petitioner’s counsel has been marked on 07.08.2023, when examination-in-chief of respondent no.2/complainant was recorded and the matter was adjourned due to lunch-break. After lunch-break, petitioner’s counsel did not turn up for conducting cross-examination of the complainant and that is why, cross-examination was recorded as - “Opportunity given – Nil.” In these circumstances, the petitioner’s application under Section 311 Cr.P.C. for recalling the aforesaid witness for cross-examination was



dismissed vide impugned order dated 06.09.2024.

5. I have heard the arguments advanced by counsel for the parties and have also gone through the case file.

6. Perusal of the record shows that cross-examination of the main witness i.e. respondent no.2/complainant has not been conducted. No doubt, presence of petitioner's counsel has been marked in the order dated 07.08.2023, whereas the petitioner has taken plea that his counsel was suffering from eye-flu on that day. It is also correct that no medical proof has been annexed before the learned Trial Court to prove the said fact. However, procedure is the hand-maid to the administration of justice and is meant for advancement of justice and not to thwart the same. A party should not be denied justice merely on the basis of technicalities. the present petition is allowed and the impugned order dated 18.11.2016 (Annexure P-12), passed by learned Judicial Magistrate Ist Class, Patiala, dismissing the complaint filed by the petitioner for want of prosecution, is hereby set aside. The complaint in question is ordered to be restored to its original number.

7. Accordingly, the present petition is allowed and the impugned order dated 06.09.2024 is hereby set aside. The Trial Court is directed to grant only one opportunity to the petitioner/accused for recording cross-examination of respondent no.2/complainant, on which date the same shall be recorded positively and if for some reason, the Trial Court is not able to get it conducted on that date, the needful be done on the very next working day.

8. However, nothing observed herein above shall be construed to be

an expression of opinion on the merits of the case. The observations recorded above are only for the purpose of deciding the present petition.

9. Pending applications, if any, shall stand disposed of along with this judgment.

November 13, 2024

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(GURBIR SINGH)

JUDGE

Whether speaking/reasoned ?	Yes/No.
Whether reportable ?	Yes/No.