

2025:PHHC:078855



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

286

CRM-M-27060-2025

Date of decision: July 03, 2025

GURNAM SINGH

.....Petitioner

Versus

CENTRAL BUREAU OF INVESTIGATION

.....Respondent

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present: Mr. P.S. Ahluwalia, Advocate for
Ms. Bhavi Kapoor, Advocate
for the petitioner.

Mr. Akashdeep Singh, Spl. P.P., CBI.

Mr. R.S. Bains, Sr.Advocate (through VC) with
Mr. M.S. Chauhan, Advocate and
Mr. S.S. Cheema, Advocate
for the complainant.

MANJARI NEHRU KAUL, J.

1. The instant petition has been filed under Section 528 of the Bharatiya Nyaya Sanhita, 2023 for scoring off the re-examination dated 23.04.2025 (Annexure P-12) conducted in case FIR No.15(S)/97-CBI/ACB/Chandigarh dated 06.03.1997 (Annexure P-1), registered at Police Station CBI/ACB, Chandigarh for offences punishable under Sections 364 and 34 of the Indian Penal Code, 1860.

2. Learned counsel for the petitioner contends that the re-examination of PW-1 Harjinder Singh, conducted on 30.04.2025, is legally impermissible and contrary to the settled principles governing re-examination under Section 138 of the Indian Evidence Act. It is submitted that during cross-examination, the witness unequivocally admitted that in his



earlier statement recorded under Section 161 Cr.P.C. on 10.06.1997, he had neither made the petitioner nor attributed any specific role to him in connection with the alleged abduction of his brother, Karanbir Singh.

3. Learned counsel for the petitioner submits that however, during re-examination, the prosecution sought to rely on an earlier statement of the witness dated 25.08.1988, also recorded under Section 161 Cr.P.C., which has neither been proved in accordance with Section 162 Cr.P.C. nor referred to at any stage during examination-in-chief. Learned counsel for the petitioner contends that such an approach amounts to filling lacunae in the case of the prosecution and is impermissible in law, particularly in light of the settled position that statements recorded under Section 161 Cr.P.C. do not constitute substantive evidence.

4. In support of his submissions, learned counsel for the petitioner has placed reliance on the judgments of the Hon'ble Supreme Court in ***Vinod Kumar Versus State (Govt. of NCT of Delhi), 2025 (3) SCC 680*** and ***Pannayar Versus State Of Tamil Nadu, 2010 (1) RCR Criminal 639***. Learned counsel has asserted that both these authorities affirm the principle that a prior statement recorded under Section 161 Cr.P.C. can only be used for contradiction, and that too, after it is duly proved in accordance with the law. Unless this procedure is followed, such statements cannot be introduced during re-examination or relied upon in evidence.

5. On being put to notice, learned Standing counsel for the CBI, on instructions, has not been able to dispute the legal position laid down in



Vinod Kumar and **Pannayar**, and has fairly conceded that in view of the same, the re-examination of PW-1 Harjinder Singh dated 30.04.2025 cannot be sustained in law. The maintainability of the present petition is also not opposed in view of the settled legal position.

5. In view of the above submissions and the fair stand taken by the CBI, this Court finds merit in the contentions advanced on behalf of the petitioner.

6. Accordingly, the instant petition is allowed, the re-examination of PW-1 Harjinder Singh conducted on 30.04.2025 (Annexure P-13) is hereby directed to be struck off from the record.

July 03, 2025
Jaspreet Kaur

(MANJARI NEHRU KAUL)
JUDGE

Whether speaking/reasoned : *Yes/No*

Whether reportable : *Yes/No*