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CRR-2232-2024 (O & M)

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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH
(110-A)

CRR-2232-2024 (O & M)
Date of Decision:15.10.2025

Dharminder Singh ... Petitioner

Versus

State of Punjab ...Respondent(s)

CORAM: HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present: Mr. Deep Inder Singh Walia, Advocate,
for the petitioner.

Mr. Harkanwar Jeet Singh, AAG, Punjab.

JASJIT SINGH BEDI, J.

The prayer in the present revision petition is for quashing of the order dated 01.10.2024 passed by the Additional Sessions Judge, Amritsar whereby the application under Section 311 Cr.P.C. filed by the petitioner has been dismissed.

2. The brief facts of the case are that an FIR No.0033 dated 19.02.2022 under Section 302 IPC, Police Station Lopoke, Amritsar Rural, came to be instituted on the statement of the complainant-Kajal daughter of the deceased against Dharminder Singh (petitioner). During the course of the investigation, Sunny and Bhola were nominated as accused. The report under Section 173(2) Cr.P.C. (Section 193(2) BNSS) was presented against all the three accused on 20.07.2022.

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3. On 28.10.2022, PW-1/Kajal, PW-2/Shamsher Singh and PW-3/Manpreet Kaur were examined by the prosecution and their cross-examination was deferred on the request of the petitioner and other accused as they wanted to engage a counsel and the case was adjourned to 02.12.2022. On 02.12.2022, no counsel appeared on behalf of the petitioner and the cross-examination on his behalf was treated as Nil. However, the counsel on behalf of Sunny conducted the cross-examination of the witnesses.

4. The petitioner had applied for Legal Aid Counsel on 02.12.2022 but the letter was issued on 03.12.2022 and Sh. Pardeep Mahajan, Advocate was appointed as a Legal Aid Counsel. On 03.01.2023, the Legal Aid Counsel for the petitioner moved an application under Section 311 Cr.P.C. for recalling witnesses PW-1/Kajal, PW-2/Shamsher Singh and PW-3/Manpreet Kaur for conducting their cross-examination. The State filed a reply on 06.09.2024 (Annexure P-5.

5. The Trial Court dismissed the aforesaid application vide order dated 01.10.2024 on the ground that the Legal Aid Counsel for accused-Sunny had cross-examined the abovesaid witnesses on 02.12.2022 and he being the same counsel representing the petitioner and Bhola Singh, could have cross-examined the witnesses on behalf of the petitioner on 02.12.2022 itself. It was further held that if the petitioner was allowed to recall the witnesses for cross-examination, it would amount to covering up the lacuna in the defence of the accused and that would cause prejudice to the prosecution.

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6. It is this order which is under challenge in the present petition.

7. The learned counsel for the petitioner contends that Sh. Pardeep Mahajan, Advocate, had cross-examined the witnesses on behalf of the accused-Sunny on 02.12.2022. Though, the petitioner had sought the appointment of a Legal Aid Counsel on the same day, the letter for the appointment for the same came to be issued only on 03.12.2022 and therefore, Sh. Pardeep Mahajan, Advocate, was appointed as a Legal Aid Counsel for the petitioner and Bhola Singh as well. Thereafter, the application was moved under Section 311 Cr.P.C. to recall the prosecution witnesses for cross-examination which was declined on the ground that the counsel i.e. Sh. Pardeep Mahajan had represented the accused-Sunny and had cross-examined the witnesses on his behalf on 02.12.2022 and he being the same counsel could have also cross-examined the witnesses on behalf of the petitioner on the same date. The Court did not consider the fact that qua the petitioner, Sh. Pardeep Mahajan, Advocate was appointed as a Legal Aid Counsel only on 03.12.2022 and therefore, he ought to have been allowed to cross-examine the witnesses later. He further contends that during the course of the pendency of the present petition, this Court had sought a report from the District & Sessions Judge, Amritsar as to whether the petitioner had been represented during the course of the Trial. Vide reports dated 20.12.2024 and 09.01.2025, it has been clarified by the Court of the District & Sessions Judge, Amritsar that on 02.12.2022, the petitioner-

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Dharminder Singh was not represented by any counsel and Sh. Pardeep Mahajan, Advocate, was appointed as Free Legal Aid Counsel on 03.12.2022 consequent to which, Sh. Pardeep Mahajan, Advocate filed his Power of Attorney on 03.01.2023. He, therefore, contends that since the petitioner was not represented by the counsel, there was no question of cross-examining the witnesses qua the petitioner.

8. The learned counsel for the State, on the other hand, contends that if the petitioner is allowed to cross-examine the witnesses once again it would amount to filling of a lacuna in the case of the prosecution and therefore, the present petition is liable to be dismissed.

9. I have heard the learned counsel for the parties.

10. As per the provisions of Section 303 Cr.P.C. (Section 340 of BNSS), any person accused of an offence has a right to be defended by a pleader of his choice. Therefore, cross-examination of a witness is a very valuable right given to an accused so as to be able to demolish the prosecution case against him. In the absence of any cross-examination, the version of the prosecution witnesses would go unrebutted.

11. In the instant case, apparently, on 02.12.2022, the petitioner was not represented by any counsel and therefore, the question of cross-examining the witnesses on his behalf does not arise.

12. In view of the above discussion, the impugned order dated 01.10.2024 passed by the Additional Sessions Judge (Fast Track Court), Amritsar, is set aside. The Legal Aid Counsel for the petitioner is

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permitted to cross-examine the witnesses in accordance with law after which the Trial Court is free to proceed with the Trial.

13. The present petition stands disposed of.

14. The pending application(s), if any, stand disposed of accordingly.

(JASJIT SINGH BEDI)
JUDGE

October 15, 2025
sukhpreet

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