

2026.PHHC.008022



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

116

CRM-M-23471-2023 (O&M)

Date of decision: 23.01.2026

Balwinder Singh and another**...Petitioners****Versus****State of Punjab and another****...Respondents****CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA**

Present:- Mr. Amit Dhawan, Advocate
for the petitioners.

Ms. Ruchika Sabherwal, Senior DAG, Punjab.

MANISHA BATRA, J. (Oral)

1. The present petition has been filed by the petitioners under Section 482 of Cr.P.C. for quashing the order dated 20.04.2023, passed by the Court of learned Judicial Magistrate First Class, Nakodar in case titled as ***State vs. Balwinder Singh etc.***, arising out of FIR No. 65 dated 31.03.2011, registered under Sections 420, 465 and 120-B of IPC at Police Station Shahkot, whereby examination of chief of PW Inspector Onkar Singh was recorded in the absence of learned counsel for the petitioners and he was not granted any opportunity to even cross-examine this witness.

2. It is argued by learned counsel for the petitioners that the impugned order is not sustainable in the eyes of law as while passing the same, the learned trial Court has ignored the settled law. The petitioners are facing trial in the aforementioned case. On 20.04.2023, the petitioners were present before the learned trial Court. However, the learned trial Court recorded the examination-in-chief of prosecution witness Inspector Onkar Singh in the absence of counsel for the accused. A prayer was made by the

2026.PHHC.008022



counsel to record examination-in-chief of the said witness afresh in his presence but the same was declined by the learned trial Court and the case was adjourned for post lunch session for recording the cross-examination of the said witness. Even no opportunity to cross-examine the said witness had been accorded to the petitioners. While passing the impugned order, the learned trial Court has ignored the fact that when examination-in-chief of material prosecution witness is being recorded, the presence of counsel for the accused is required as he has a right to object to a leading or irrelevant question being asked to the witness. It has also been ignored by the learned trial Court that right to cross-examine the prosecution witness is an important right given to an accused and the learned trial Court should not have been hyper-technical in passing the impugned order. A great prejudice shall be caused to the rights of defence of the petitioners, if the examination-in-chief of the said witness is not recorded afresh in the presence of the counsel for the petitioners and if they are not granted to cross-examine him. Hence, it is urged that the petition deserves to be allowed and the impugned order is liable to be set aside. To fortify his arguments, learned counsel for the petitioners has relied upon ***Ekene Godwin and another vs. State of Tamil Nadu, 2024 (3) RCR (Criminal) 341*** and ***Madan Lal and others vs. State of Rajasthan and others, 2012 (1) Cri. L. R. (Raj.) 224.***

3. *Per contra*, learned State counsel has argued that there is no illegality or infirmity in the impugned order. The examination-in-chief of the PW Inspector Onkar Singh was conducted in the presence of the accused. He was not a material witness and had proved some documents, which were

2026.PHHC.008022



already available on record since the date of presentation of challan. Hence, the dismissal of the petition is prayed for.

4. This Court has heard the rival submissions.

5. A careful reading of the zimni orders dated 20.04.2023 clearly reveals that the examination-in-chief of PW Inspector Onkar Singh was not recorded in the absence of the petitioners/accused. Both the accused had appeared before the learned trial Court, their presence was duly marked and they were informed that the said witness was present. It was on their own request that time was given to call their counsel and the examination-in-chief commenced in their presence. During the course of recording of evidence, learned defence counsel appeared and the remaining part of the examination-in-chief was recorded in his presence. After completion of the examination-in-chief, learned defence counsel was afforded an opportunity to cross-examine the witness, which he declined by seeking an adjournment. The learned trial Court, keeping in view the age of the case and its inclusion in the action plan category and the fact that the witness had been summoned pursuant to an order passed under Section 311 of Cr.P.C., rightly declined the request. Even thereafter, the case was adjourned for the post-lunch session specifically to enable the defence to cross-examine the witness. Despite this indulgence, the defence counsel again chose not to cross-examine PW Inspector Onkar Singh and insisted upon adjournment on the ground that he intended to challenge the order declining re-recording of the examination-in-chief. From the above sequence of events, it is evident that no prejudice was caused to the petitioners on account of the recording of the examination-in-chief of PW Inspector Onkar Singh. The right of cross-examination was duly afforded but was

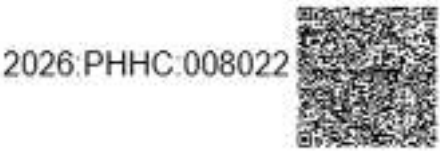
2026.PHHC.008022



consciously not exercised by the defence. The grievance raised before this Court is, thus, not borne out from the record and appears to stem from the conduct of the defence rather than any illegality or procedural irregularity on the part of the learned trial Court. In fact, it is revealed that it is the petitioners themselves who are delaying the disposal of the case, which belongs to the year 2013.

6. So far as the ratio of law laid down in aforecited authorities is concerned, the same is not applicable to the facts of the present case as the facts are clearly distinguishable. In *Ekene Godwin*'s case (supra), the trial Court had recorded the examination-in-chief of 12 prosecution witnesses on different dates without affording any effective opportunity of cross-examination to the accused. In *Madan Lal*'s case (supra), the examination-in-chief of the prosecution witness was recorded in the complete absence of the defence counsel. In the present case, however, the accused were present, the defence counsel appeared during the recording of examination-in-chief, and repeated opportunities to cross-examine the witness were granted but not availed. Hence, the said judgments are not applicable.

7. In view of the discussion as made above, this Court finds no ground to direct re-recording of the examination-in-chief of PW Inspector Onkar Singh nor does the impugned order suffer from any perversity, illegality or abuse of the process of Court warranting interference under Section 482 of Cr.P.C. Nevertheless, in order to balance the need for expeditious disposal of the trial with the fundamental right of the accused to effectively defend themselves, this Court, in the interest of justice, grants the petitioners one effective and final opportunity to cross-examine PW Inspector



Onkar Singh, subject to the condition that no further adjournment shall be sought or granted. In the event of failure to avail the said opportunity, the learned trial Court shall be at liberty to proceed further in accordance with law without any further indulgence. The petition stands disposed of accordingly.

23.01.2026
Waseem Ansari

(MANISHA BATRA)
JUDGE

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether reportable</i>	<i>Yes/No</i>