

(2013) 02 P&amp;H CK 0243

**High Court Of Punjab And Haryana At Chandigarh****Case No:** Criminal Revision No. 517 of 2013 (O and M)

Sital Singh

APPELLANT

Vs

State of Punjab

RESPONDENT

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**Date of Decision:** Feb. 14, 2013**Citation:** (2013) 171 PLR 686**Hon'ble Judges:** M.M.S. Bedi, J**Bench:** Single Bench**Advocate:** R.S. Sekhon, for the Appellant;**Final Decision:** Allowed

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**Judgement**

M.M.S. Bedi, J.

Petitioner is aggrieved by an order passed by CJM, Ferozepur dismissing his application u/s 311 Cr.P.C. recalling PW3 Raunak Singh, retired SI, the investigating officer, PW4 Mohinder Singh, and PW5 Jaswinder Kaur, whose cross-examination has been recorded as "nil" "opportunity given". Counsel for the petitioner submits that the re-summoning of the said witnesses is necessary for just decision of this case as opportunity of cross-examination of witnesses was not given on account of the fact that counsel for the petitioner was not well and a prayer had been made for adjournment on the ground of sickness of the counsel. The trial Court has observed that an application is a device to delay the proceedings and that the case falls in the "action plan cases" as such there was no justification to invoke the provisions of Section 311 Cr.P.C.

2. Counsel for the petitioner has stated at bar that the case is still at the stage of recording of prosecution witnesses.

3. Taking into consideration the circumstances and spirit of Section 309 Cr.P.C., this Court is of prima facie opinion that in the interest of justice, the trial Court could have postponed the proceedings by imposing appropriate costs on the petitioner as per explanation 2 of Section 309 Cr.P.C.

4. Notice of motion to Advocate General, Punjab.

5. On the asking of the Court, Mr. Ankur Jain, AAG, Punjab accepts notice. Copy given. After considering the fact that the matter pertains to year 2009 and that the allegations against the petitioner is that he had procured a ration Card in the year 1999 showing his age to be 45 years but later on he procured one more ration card by showing his age as 60 years and entered the name of his son in the ration card. Both the ration cards contained different pictures. In case the petitioner is not given a fair opportunity to cross-examine the three witnesses, he will be deprived of his right of defence and will be prejudiced being none of his faults. The interest of justice would be adequately met in case the petitioner is permitted to resummon the three witnesses subject to payment of cost of Rs. 5000/- per witness. In the interest of justice, this petition is disposed of in limine. The impugned order is set aside. A direction is issued to the trial Court that petitioner will be permitted to deposit a total sum of Rs. 15000/- before the trial Court. The application u/s 311 Cr.P.C. for re-summoning the three witnesses i.e. PWs. 3, 4 and 5 will be allowed for any date convenient to the trial Court. The witnesses will be summoned and paid cost of Rs. 5000/- each in order to enable the petitioner's counsel to cross-examine the witnesses. It is made clear that only one opportunity will be granted to the petitioner to re-summon and examine PWs 3, 4 and 5 aforesaid, subject payment of Rs. 5000/- each as costs. It is observed that in case the order is not acceptable to any effected party, it will be open to him to approach this Court as this order has been passed in limine in the interest of justice and in the interest of expeditious disposal of the trial.