

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

**CRM-M-17185-2015**

**Date of decision : 25.05.2015.**

**Azad**

.....Petitioner

*Versus*

**State of Haryana**

...Respondent

**CORAM : HON'BLE MR. JUSTICE DARSHAN SINGH**

1. Whether Reporters of the local papers may be allowed to see the judgment ?
2. To be referred to the Reporters or not ?
3. Whether the judgment should be reported in the Digest ?

Present: Mr. Rajesh Bhuteja, Advocate for petitioner.

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**DARSHAN SINGH, J.**

The present petition has been filed under Section 482 of the Code of Criminal Procedure, 1973 (here-in-after called 'Cr.P.C.') for quashing the order dated 11.05.2015, passed by learned Additional Sessions Judge, Mewat, vide which the application filed by accused-petitioner to recall PW2 Mohd. Hafiz Niaj and PW5 Jumrat, has been dismissed.

2- Petitioner Azad is facing the trial for the offences punishable under Sections 304-B, 498-A, 406 read with Section 34 of the Indian Penal Code, 1860 (here-in-after called 'IPC') on the allegations

that Astuna, the niece of the complainant, who was married with the present petitioner was treated with cruelty for the demand of an Alto car and Rs.1,00,000/-. She was administered poison and killed.

3- During the trial, an application under Section 311 Cr.P.C. was moved by the petitioner-accused for recalling PW2 Mohd. Hafiz Niaj and PW5 Jumrat for cross-examination on the ground that they were not properly cross-examined on some technical points and material questions could not be put to them.

4- The aforesaid application was contested by the respondent-State on the plea that both the witnesses were cross-examined by the learned defence counsel at length. These witnesses cannot be recalled to fill up any lacuna.

5- The aforesaid application filed by the accused-petitioner was dismissed by the learned trial Court vide the impugned order dated 11.03.2015. Hence, this petition.

6- I have heard learned counsel for the petitioner and have examined the record of the case.

7- Learned counsel for the petitioner contended that PW2 Mohd. Hafiz Niaj and PW5 Jumrat are the material witnesses of the prosecution. They could not be cross-examined on some technical points and material questions could not be put to them. Their further cross-examination is essential to the just decision of the case. He further contended that learned counsel for the complainant had no objection in recalling them, even then the application filed by the petitioner has been

wrongly dismissed.

8- I have duly considered the aforesaid contentions.

9- This fact is not disputed that PW2 Mohd. Hafiz Niaj and PW5 Jumrat were duly cross-examined by the learned defence counsel, when they appeared in the witness box. The application for recalling them has been filed entirely on indefinite and vague plea. Learned counsel for the petitioner has not been able to specify as to what technical questions could not be put to these witnesses at the time of their cross-examination and what is the material omission in their cross examination. Rather in the impugned order, the learned trial Court has categorically mentioned that both these witnesses were duly cross examined on all the material points.

10- The powers under Section 311 Cr.P.C. can only be exercised by the Court if the recalling of a witness is essential to the just decision of the case. The learned trial Court has observed that the purpose of moving the application at this stage seems that the accused might have won over these witnesses and wants to derive from them the subsequent version in his favour, for which the provisions under Section 311 Cr.P.C. cannot be invoked. There is no fault with the aforesaid observations of the learned trial Court. It is evident from the impugned order that the learned counsel for the complainant has not contested the petition and has rather stated at Bar that he has no objection, which shows that there is some collusion between the accused and the complainant party and the present application has been moved by the accused

petitioner for recalling these witnesses for the further cross-examination, so that they may resile from their earlier statements.

11- The Hon'ble Supreme Court in case **Hanuman Ram Vs. State of Rajasthan and others 2008(4) RCR (Criminal) 823** has authoritatively laid down that once the witness has been examined in chief and cross-examined fully, such witness should not be recalled and re-examined to deny the evidence he has already given before the Court.

12- Thus, keeping in view my aforesaid discussion, I do not find any illegality in the impugned order.

13- Consequently, the present petition has no merits and the same is hereby dismissed.

**Dated: 25.05.2015**

*sunil yadav*

**( DARSHAN SINGH )  
JUDGE**