

119

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-17429 of 2015

Date of decision: October 05, 2015

Ashok Kumar Nischal

.....Petitioner

Versus

Sate of Punjab and another

.....Respondents

CORAM: HON'BLE MRS. JUSTICE SABINA

Present: Mr. Saurav Khurana, Advocate
for the petitioner.

SABINA, J

Petitioner has filed this petition challenging the orders dated 17.11.2014 (Annexure P-2) and 04.03.2015 (Annexure P-4).

Learned counsel for the petitioner has submitted that the petitioner had not been informed by his counsel that the cross-examination of the complainant had been treated as "Nil". It is only when the petitioner engaged a new counsel that he came to know that the cross-examination of the complainant has been treated as "Nil". Consequently, application under Section 311 of Code of Criminal Procedure, 1973 ('Cr. P.C' for short) was moved for summoning the complainant for her cross-examination. In support of his arguments, learned counsel has placed reliance on *Raj Kumar versus State of Haryana and others*, 2013 (4) R.C.R. (Criminal) 109, wherein, it was held as under:-

*"Vide order dated 17.11.2012, an application to
summon Sanju as additional witness under Section*

*311 Cr.P.C. has been dismissed. Sanju was stated to be 8 years of age when her mother was allegedly killed. She alongwith her brother Vikram were allegedly present at the time of occurrence. Vikram has already appeared as a witness, but he has not supported the case of the prosecution. No doubt, Sanju's statement under Section 161 Cr.P.C. was not recorded. A request has been made for examining Sanju after 3 years of occurrence. Said Sanju had allegedly been staying with the complainant side so chances of her being under their influence cannot also be ruled out but in view of the fact that one of eye witnesses having turned hostile, it will be relevant and important for the trial Court to examine Sanju as a witness to enable the trial Court to determine the truth after her statement in the Court and cross examination by the accused-respondents. Since Sanju appears to be a child witness, it is expected that her statement would be recorded complying with Section 118 of the Evidence Act. The trial Court has got ample powers to examine any witness irrespective of the fact that his/her name appears in the list of witnesses, as per judgment of this Court **Rajvinder Kumar Vs. State of Haryana (4) RCR (Criminal) 474.**"*

Section 311 Cr. P.C. reads as under:-

"311. Power to summon material witness, or examine person present.

Any Court may, at any stage of any inquiry, trial or other proceeding under this Code, summon any person as a witness, or examine any person in attendance, though not summoned as a witness, or recall and re-examine any person already

examined; and the Court shall summon and examine or recall and re-examine any such person if his evidence appears to it to be essential to the just decision of the case.”

Thus, as per the above provision, Court has ample power to summon any witness during trial, if his/her evidence appears necessary for the just decision of the case.

In the present case, petitioner is facing trial in FIR No.487/2008, under Sections 406, 420, 506 of Indian Penal Code, 1860, registered at Police Station Civil Lines, Amritsar. During trial, petitioner moved an application under Section 311 Cr. P.C. for recalling the complainant-respondent No.2 for cross-examination. Application moved by the petitioner was dismissed by the trial Court vide order dated 17.11.2014. The said order was upheld by the Court of revision vide order dated 04.03.2015. Hence, the present petition by the petitioner.

A perusal of the order dated 04.03.2015 passed by the Court of revision reveals that the complainant-respondent No.2 was examined in chief on 13.09.2012 and her cross-examination was deferred to 15.09.2012. Petitioner moved an application for exemption of his personal appearance on 15.09.2012 and consequently, the case was adjourned to 19.09.2012. On 19.09.2012, complainant-respondent No.2 was again present for the purposes of her cross-examination, but petitioner moved an application for exemption of his personal appearance. Application moved by the petitioner for

exemption of his personal appearance was allowed. Application moved by the petitioner for amendment of the charge was dismissed. Although, petitioner had averred in the application that he had no objection if evidence was recorded in his absence but cross-examination of the complainant-respondent No.2 was not conducted on 19.09.2012. Consequently, the cross-examination of the complainant-respondent No.2 was ordered to be treated as "Nil – opportunity given". Thereafter, prosecution examined PW2 Paramjit Singh on 16.01.2013 and 19.03.2013. Petitioner absented during trial and was declared a proclaimed offender vide order dated 22.11.2013 and file was ordered to be consigned. Petitioner was later arrested and supplementary challan was presented against him.

Keeping in view the act and conduct of the petitioner, the learned Additional Sessions Judge rightly dismissed the revision petition filed by the petitioner. It is evident that the petitioner was merely trying to delay the trial. The judgment relied upon by the petitioner fails to advance the case of the petitioner as it is based on different facts.

No ground for interference by this Court, is made out.

Dismissed.

**(SABINA)
JUDGE**

October 05, 2015
mahavir