

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CRM-M-23520 of 2015 (O&M)

Date of decision: 22.07.2015

Baldev Singh @ Goga

..... Petitioner

Versus

State of Haryana and another

..... Respondents

CORAM: HON'BLE MR. JUSTICE R.P. NAGRATH

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. Gorakh Nath, Advocate
for the petitioner.

R.P. NAGRATH, J. (Oral)

Petitioner has invoked the inherent jurisdiction of this Court under Section 482 Cr.P.C. seeking to quash order dated 06.07.2015 passed by learned trial Court whereby application under Section 311 Cr.P.C. for recalling PW-1 the prosecutrix and PW-3 her mother for further cross-examination, was dismissed.

The petitioner is facing trial in FIR no. 86 dated 03.11.2014 for offences under Sections 376, 452 and 120-B IPC and Section 3 and 4 of the Protection of Children from Sexual Offences Act, 2012.

I have heard learned counsel for the petitioner, perused the impugned order and also the paper-book and find no substance in the challenge to impugned order.

As per story, prosecutrix was 16 years old at the time of occurrence. She was examined as PW-1 by the trial Court on 19.01.2015. Her statement is Annexure P-3. She was subjected to extensive cross-examination. The statement of mother of

prosecutrix is Annexure P-4. She was also fairly cross-examined. After closing of prosecution evidence, statement of accused under Section 313 Cr.P.C. had also been recorded. Application of recalling PW-1 and PW-3 was made while the case was at the defence stage.

Before the trial Court it was contended that some other counsel was earlier representing the petitioner.

From the circumstances of the case it seems that the application in hand was filed after winning over the witnesses as it has been specified in paragraph no. 9 of the instant petition that subsequent to examination of the prosecutrix and her mother they were told that facts stated during the trial are not correct and they want to reveal the truth. I am of the view that such a course is neither legal nor permissible as the accused had fair opportunity to cross-examine the witnesses.

Learned trial Court while rejecting the application observed as under:-

“9. First of all, it is to be noted here that learned defence counsel has argued the matter against the record. Record shows that one of the witnesses namely Bhupinder Kaur was cross-examined by him and in that eventuality, his arguments that material questions have been left unquestioned by earlier counsel, is totally against the proceedings of this case and is devoid of merits. Since 5.2.2015 till 15.5.2015, he did not chose to file any such application. Evidence of

prosecution has already been recorded and the case is at the stage of defence evidence, if any and arguments.

10. *No questions have been told to the Court which were not put to the witnesses earlier and their relevancy for the purpose of deciding the case. No material has been brought to the notice of the Court, which can compel the court to opine that the reexamination of the afore-named witness is essential, in the present case.*
11. *Accused/defence had already been afforded full opportunity to cross-examine these witnesses and they have been cross-examined at length. It has nowhere been detailed in the application that such and such questions have been left, which are material one and to be asked from the witnesses, for just decision of the case. When the afore-named witnesses have already been examined at length, merely saying that some important questions could not be put to them, would not entitle the accused to recall them for further examination.*

The contention that the prosecutrix and her mother are required to be re-called for revealing the true story is only to meet out the above observations of the trial Court which obviously cannot be accepted. Such a course would lead to travesty of justice.

The impugned order of the trial Court is based on proper application of principles governing Section 311 Cr.P.C. and there is no scope of interference by this Court.

Dismissed.

July 22, 2015
jk

(R.P. NAGRATH)
JUDGE