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

CRM no. M-43839 of 2013(O&M)

Date of Decision : 05.05.2015

Rajjo

....Petitioners

Versus

State of Haryana and others

...Respondent

CORAM : HON'BLE MR.JUSTICE MAHESH GROVER

Present : Mr. Shalender Mohan, Advocate for the petitioner

Mr. P.S.Chauhan, Addl. AG, Haryana with
Mr. Himmat Singh, AAG, Haryana

Mr.Kuldeep Khandelwal, Advocate for private respondents

MAHESH GROVER, J.

The petitioner prays for recall of a witness in the exercise of power under Section 311 Cr.P.C.

There is indeed no doubt that the powers under Section 311 can be exercised to summon a material witness if the Court at any stage of inquiry, trial or other proceedings concludes that recall or re-examination of any person who has already been examined is necessary, if it appears to the Court that his evidence is essential for the just decision of the case.

The petitioner wants to summon Dr. Rakesh Kamra who has already been examined as a prosecution witness. He had submitted medico legal report and was also subjected to cross examination by the accused.

The plea now sought to be introduced is that in the challan two names of the doctor were mentioned i.e Rakesh Kumar and Rakesh Kumar Kamra which led to some confusion in the mind of the counsel who expected two separate doctors to be examined. It is thus contended that on

account of this confusion the relevant questions about the x-ray of the injury could not be put to Dr. Rakesh Kumar who had otherwise produced the MLR and testified to the same.

The respondents would oppose such a prayer to contend that the case has been lingering on since 2006 and the statement of the accused himself under Section 313 Cr.P.C was recorded way back in the year 2011 and the present application is merely to delay the proceedings further. Besides it is contended that a specific objection was taken by them in reply to the application moved by the petitioner under Section 311 Cr.P.C which had the list of witnesses appended to the case file indicating only one doctor i.e. Dr. Rakesh Kumar and if that be so then the petitioner was clearly alive to the fact that only one doctor is to be examined. It is next contended that the petitioner cannot be permitted to fill up the lacunae.

Considering the matter in entirety I am of the view that the petition is totally misconceived. Indeed the powers under Section 311 Cr.P.C can be exercised by the Court in case it concludes that examination or recall of a witness is essential for just decision of the case but at the same time the Court cannot permit the filling up of lacunae left out on account of tardy or slip shod examination by a party. There is nothing on record to suggest that the objection taken by the respondents regarding one name appearing in the list of witnesses is wrong. The petitioner has not cared to place on record any material to erase such an impression.

If that be so then there would be a necessary inference of the petitioner being conscious of the fact of there being only one doctor and so it was expected that the petitioner shall put forward all the questions in the examination intended to serve his objective. Failure to do so cannot be

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permitted to be rectified by recall of a witness. What is to be kept in the mind is that a Court has to conclude that a particular witness needs to be examined or recalled for the just decision of the case but not for the purposes of filling up the lacunae left by the party or his counsel on account of unimaginative cross-examination.

Hence, instant petition is held to be without any merit and the same is hereby dismissed.

May 05, 2015
rekha

(Mahesh Grover)
Judge