

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

CRM-M No.6303 of 2014 (O&M)

Date of decision: 22nd September, 2015

Sandeep

... Petitioner

Versus

State of Haryana and others

... Respondents

CORAM: HON'BLE MR. JUSTICE FATEH DEEP SINGH

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

Present: Ms. Loveleen Dhaliwal, Advocate for the petitioner.

Mr. Munish Sharma, Asstt. Advocate General, Haryana
for respondent No.1.

None for respondents No.2 to 4.

FATEH DEEP SINGH, J.

A case by way of FIR No.234 dated 18.06.2013 under Sections 376/323/365/450 IPC read with Section 3 of the Scheduled Castes and Tribes (Prevention of Atrocities) Act, 1989 was registered at Police Station Safidon, District Jind against petitioner Sandeep by prosecutrix-respondent No.2 who is a married lady.

During the course of trial, the prosecutrix was examined as PW2, her husband/respondent No.3 as PW3 and brother-in-law/respondent No.4 as PW4, who were declared hostile and were

cross-examined by the learned State counsel. It is subsequent thereto during the course of trial, an application under Section 311 Cr.P.C. was moved on behalf of the prosecutrix for re-calling and re-examining all these three PWs. The short ground taken up was that they were under threat and could not report the matter to the trial Court at the time of trial and now they wanted to testify. The trial Court of learned Additional Sessions Judge, through orders dated 04.01.2014 (Annexure P1) allowed the application and re-called these three PWs. The same has been sought to be quashed in this petition preferred under Section 482 Cr.P.C. by the accused petitioner.

Heard Ms. Loveleen Dhaliwal, Advocate for the petitioner and Mr. Munish Sharma, Asstt. Advocate General, Haryana representing the State/respondent No.1.

It is not disputed by the two sides that ample powers vest in Court to re-call and re-examine any witness which it deems necessary and essential for the just decision of the case. As has been contended on behalf of the petitioner; the prosecutrix, her husband and brother-in-law though were examined at the trial but they did not support the prosecution story and at a subsequent stage when the trial was at fag end, had come up with this plea and sought their re-calling and re-examination.

Though on behalf of the respondent/State, Mr. Munish Sharma, Asstt. Advocate General, Haryana has sought to make forcible submissions that the trial Court has judiciously and reasonably

exercised its powers which is controverted on behalf of the petitioner by Ms. Loveleen Dhaliwal, Advocate.

It needs to be kept in mind that the Courts in administration of justice are to act fairly and justly as an embodiment of equity and cannot be swayed by emotions. All these PWs had appeared, their examinations in-chief were recorded and thereafter were fully cross-examined. The witnesses after being declared hostile on the State request have been adequately confronted with their previous stands. Thus, it would be highly unjust and inequitable if such witnesses at this juncture under the garb and exercise of powers under Section 311 Cr.P.C. are allowed to be re-called and re-examined to erase out the evidence which has come on the record. Under what circumstances these witnesses have testified so, are within the ambit of the trial Court and to check the falsehood of their evidence and the likely consequences that will ensue. On behalf of the petitioner, reliance has been sought to be placed upon **'Mishrilal and others v. State of M.P. and others'** (2005)10 SCC 701, which ratio of the Hon'ble Supreme Court was subsequently relied upon in **2008(4) RCR (Criminal)** titled as **'Hanuman Ram v. The State of Rajasthan and others'**, where the Hon'ble Apex Court had adequately considered the purview of powers under Section 311 Cr.P.C.

Since the powers though are discretionary but are to be exercised within the realm of judicial principles and therefore, the cardinal rule enshrined by way of Sections 60, 64 and 91 of the Indian

Evidence Act, 1872 being the best evidence needs to be considered. Mere fact that the prosecutrix and her witnesses have been changing their stands during the investigations and the trial, does not augur well for them and they cannot be allowed undue benefit out of the same when even as has been contended by the petitioner and could not be sufficiently controverted by learned State counsel that nothing substantial is there on the record that any threat was meted out by the accused side to these PWs, and therefore to the mind of this Court, the trial Court has overlooked such a conduct of the witnesses and has come to a totally unjustified conclusion which is contrary to the principles of justice.

In the light of the same and on account of the foregoing reasons, the impugned order (Annexure P1) re-calling and re-examining the witnesses is set aside by way of acceptance of the instant petition.

(FATEH DEEP SINGH)
JUDGE

September 22, 2015

rps