

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

CRM-M-7363 of 2015

Date of Decision: 10.04.2015

Bablu Kumar

....Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MRS. JUSTICE SNEH PRASHAR

Present: Mr. Anish Gautam, Advocate
for the petitioner.

Mr. A.S. Klar, AAG, Punjab

SNEH PRASHAR, J.

1. The present petition has been filed under Section 482 of the Code of Criminal Procedure (for short 'Cr.P.C') for setting aside the order dated 19.02.2015 passed by the learned Additional Sessions Judge, SAS Nagar Mohali, whereby the application under Section 311 Cr.P.C filed by the petitioner was rejected.

2. Heard the submissions made by Mr. Anish Gautam, Advocate representing the petitioner and Mr. A.S, Klar, AAG, Punjab representing the State.

3. It was submitted by learned counsel for the petitioner that the learned trial Court had committed an error while dismissing the application

of the petitioner for recalling the prosecutrix for cross-examination. On 05.12.2014 three witnesses of the prosecution were present. One witness, namely, Anjali Yadav was examined and the other Dr. Kuljit Kaur was partly examined and her remaining statement was deferred for want of report of Chemical examiner. During the statement of third witness the prosecutrix, Shri N.K. Nanda, Advocate representing the accused refused to defend him and left the Court, on which a legal aid counsel was provided to the accused and the statement of the prosecutrix was completed. Learned counsel contended that the legal aid counsel engaged on the same day had no time to consult the petitioner and could not cross-examine the witness properly which caused serious prejudice to the petitioner. For the said reason the petitioner moved an application under Section 311 Cr.P.C. for recalling the prosecutrix for further cross-examination.

4. Learned State counsel opposed the prayer of the petitioner. He submitted that the prosecutrix was thoroughly cross-examined by the legal aid counsel and there was no ground for recalling her.

5. In the present case, on the statement of the prosecutrix, First Information Report No.73 dated 05.08.2014 was registered under Section 376(2) (F), 506 of the Indian Penal Code (for short 'the Code') and Sections 4, 6, 8 of the Protection of Children from Sexual Offences Act, 2012 at

Police Station Naya Gaon.

As submitted by the petitioner himself on 05.12.2014 there were three witnesses present out of whom one was examined and part examination in chief of the other was recorded. No reason is being mentioned by the counsel representing the petitioner as to why the counsel representing him had refused to defend him at the time of recording the statement of the prosecutrix. In any case, it transpires from the order of learned trial Court that when the counsel representing the petitioner refused to defend him, he was provided a legal aid counsel. It is not the case of the petitioner that he had sought time to engage a new counsel. Elaborating the state of facts in which the legal aid counsel was appointed to defend the petitioner at the time of examination of the prosecutrix the order of learned Additional Sessions Judge is as under:

“After giving thoughtful consideration to the rival contentions raised by the Learned counsel for the applicant/accused and the Learned Additional Public Prosecutor for the State, it is observed that present case was got registered against the applicant/accused at the instance of the prosecutrix..., by suffering statement Ex.PW1/A. The prosecutrix... and accused are real brother sister. The

prosecutrix... was brought to the Court from Snehalya, Chandigarh on 05.12.2014. On 05.12.2014, when prosecutrix was being examined-in-chief, Shri N.K. Nanda, Advocate counsel for the accused, decided at the spur of the moment not to defend the case on behalf of the accused. Therefore, on 05.12.2014, itself, finding a peculiar situation arisen, this Court find it proper to get the accused provided Free Legal Aid Counsel. Therefore, Shri H.S. Pannu, Advocate, was arranged as Free Legal Aid Counsel for the accused. Thereafter, the examination-in-chief of the prosecutrix... was conducted and Shri H.S. Pannu, Advocate, Free Legal Aid Counsel for the accused conducted the cross-examination of PW-4 after consultation with the accused”.

6. No adversity or perversity could be demonstrated by learned counsel for the petitioner in the above order of learned trial Court. When the statement of the prosecutrix was being recorded his counsel decided not to defend the petitioner. Watching the interest of the petitioner, a free legal aid

counsel was provided to him. It cannot be said that the legal aid counsel had no time to consult the petitioner. The prosecutrix was duly cross-examined by the legal aid counsel. Recalling of the prosecutrix cannot be allowed merely because the petitioner has since engaged a new counsel.

7. Thus finding no ground for intervention in the impugned order of the learned trial Court, the present petition is dismissed.

(SNEH PRASHAR)
JUDGE

April 10, 2015

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