

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

Criminal Revision No.1386 of 2015 (O&M)

Date of decision : 22.04.2015.

Rajbir alias Raja

.....Petitioner

Versus

State of Haryana

...Respondent

CORAM : HON'BLE MR. JUSTICE DARSHAN SINGH

1. Whether Reporters of the local papers may be allowed to see the judgment ? Yes
2. To be referred to the Reporters or not ? Yes
3. Whether the judgment should be reported in the Digest ? Yes

Present: Mr. Parmod Gahlawat, Advocate for petitioner.

DARSHAN SINGH, J.

The present revision petition has been filed against the order dated 31.03.2015 passed by learned Additional Sessions Judge, Jind, whereby the application filed by the present petitioner under Section 311 of the Code of Criminal Procedure, 1973 (hereinafter referred to as “Cr.P.C.”) for recalling PW1 Karambir has been dismissed.

2- On the statement of PW1 Karambir, the brother of deceased Birmati who was the wife of present petitioner, the present case has been registered under Sections 328/302/34 of the Indian Penal Code, 1860 (hereinafter referred to as “IPC”), on the allegations that the present

petitioner and his family members used to harass Smt. Birmati, the sister of the complainant for the demand of dowry. In this regard, a dowry case was also registered against them but the matter was compromised. It is alleged that on 07.05.2013, the petitioner and his family members forcibly administered poison to the deceased. On receiving the information, complainant reached to Dalamwala Hospital at Jind, where his sister was alive at that time and narrated the incident to them. Thereafter, she died.

3- On completion of the investigation, the prosecution was launched against the petitioner for the offence punishable under Section 306 IPC.

4- Complainant Karambir appeared as prosecution witness No.1 and was examined fully. The petitioner moved an application under Section 311 Cr.P.C. for recalling PW1 Karambir for further cross-examination on the ground that some important questions could not be put to him in the cross examination. This application was contested by the prosecution and was ultimately dismissed by the learned trial Court vide impugned order dated 31.03.2015.

5- Aggrieved with the aforesaid order, the present revision petition has been preferred.

6- I have heard learned counsel for the petitioner and have examined the record of the case.

7- Learned counsel for the petitioner contended that the recalling of PW1 Karambir is essential to the just decision of the case.

He contended that some material questions could not be put to PW1 Karambir in the cross examination. He further contended that PW1 Karambir has got recorded in the FIR that when he reached in the hospital, the deceased was alive and she narrated the entire facts to him but his real brother Phool Singh who also happens to be the brother of the deceased, has appeared as PW12 and has stated that when they reached in Dalamwala Hospital, Jind his sister was found dead. The further cross examination is necessary to clarify this contradiction. He contended that a witness can be recalled at any stage of the case even to withdraw this testimony in order to serve the ends of the justice. To support his contentions he relied upon cases **Baljit and other Vs. State of Haryana and another 2009 (2) RCR (Criminal) 178**. Thus, he pleaded that the trial Court should be directed to recall PW1 Karambir in the interest of justice.

8- I have duly considered the aforesaid contentions.

9- The application moved by the petitioner under Section 311 Cr.P.C. for recalling PW1 Karambir is totally vague and indefinite. In para No.2 of the application the petitioner has simply mentioned that some important questions could not be put to PW1, which are materially different from the earlier cross examination. It has not been at all specified as to what material questions could not be earlier put in the cross examination of PW1. PW1 Karambir has been cross examined at length by the learned defence counsel on 03.01.2014, 24.05.2014 and finally on 18.11.2014. Thus, it took about more than 10 months in

concluding the statement of PW1 Karambir. It is not the case of the accused/petitioner that learned defence counsel had neglected his duties to effectively cross examined the witness.

10- It appears that there is some ulterior motive on the part of the petitioner to move this application as the other material witnesses of the prosecution namely PW12 Phool Singh, the another brother of the deceased and PW13 Mahabir have resiled from their statements. The learned trial Court has rightly observed that after having won over the complainant now the petitioner wants to get the complainant recalled, so that he may depose in his favour and the application in hand is nothing but an abuse of process of law.

11- Case **Baljit and others Vs. State of Haryana and another** (supra) relied upon by learned counsel for the petitioner has no application to the facts of the case. In that case the witnesses wanted to withdraw the statement in pursuance of some compromise with the intervention of 40 villages Panchayat. The Hon'ble Supreme Court in case **Hanuman Ram Vs. State of Rajasthan and others 2008(4) RCR (Criminal) 823** has authoritatively laid down that once the witness has been examined in chief and cross fully, such witness should not be recalled and re-examined to deny the evidence he has already given before the Court. The case **Baljit and others Vs. State of Haryana and another** (supra) relied upon by learned counsel for the petitioner is contrary to the aforesaid authoritatively pronouncement of Hon'ble Apex Court. Thus, it is of no help to the petitioner.

12- Thus, keeping in view my aforesaid discussion, I do not find any illegality in the impugned order.

13- Thus, the present revision petition has no merits and the same is hereby dismissed.

Dated: 22.04.2015
sunil yadav

(DARSHAN SINGH)
JUDGE