

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

**CRR No. 1698 of 2015
DECIDED ON: MAY 18, 2015**

MANDEEP AND ANOTHER

.....PETITIONERS

VERSUS

STATE OF HARYANA

.....RESPONDENT

CORAM: HON'BLE MR. JUSTICE JASPAL SINGH

- 1. Whether Reporter of 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. Saurabh Dalal, Advocate
for the petitioner.

JASPAL SINGH, J

Through this petition, petitioners has challenged the order dated April 18, 2015 passed by learned Additional Sessions Judge, Gurgaon whereby, an application moved under Section 311 Cr.P.C moved by the petitioners for recalling/summoning the prosecution for her further cross-examination, was dismissed.

2. While assailing the impugned order, it has been ebulliently argued by learned counsel for the petitioner that prosecutrix was examined as PW-1 by prosecution during trial of above-referred case on April 01, 2015 and the said witness was cross-examined by the petitioners on the same day.

However, the witness could not be examined on some material and vital

points, which is likely to cause prejudice to the petitioners. Section 311 Cr.P.C. confers wide powers on the Court at any stage of the trial to summon any person as a witness as well as to recall and re-examine any person already examined. The case is still pending before learned Additional Sessions Judge, Gurgaon for trial as the other witnesses cited in the list are still to be examined. Moreover, in the facts and circumstances of the case in hand, it would be just and expedient to allow the petitioners to further examine the prosecutrix, as it would impart justice between the parties. After the examination of prosecutrix on April 01, 2015, a compromise (Annexure P-1) has been effected in between the parties, which has also been reduced into writing. According to which parties have settled the dispute and Mandeep has solemnized marriage with the prosecutrix with the permission of her parents on April 14, 2015 and have agreed to reside together as husband and wife. Thus, impugned order is not sustainable in the eyes of law and is liable to be set aside by way of acceptance of instant revision petition.

3. This court has given deep thought to the submissions made by learned counsel for the petitioners and have meticulously gone through the record available on file.

4. It is an undisputed fact that petitioners are facing trial under Section 376 and 506 IPC, which is pending disposal before learned Additional Sessions Judge, Gurgaon and further that prosecutrix has already been examined as PW-1, who has categorically toed the line of prosecution and has specifically attributed the allegations qua petitioner No.1-Mandeep that he committed rape upon her against her wish and consent. Subsequent thereto, it appears that petitioners prevailed upon prosecutrix and succeeded

in getting the compromise effected. Instant application is nothing but appears to have been moved by petitioners just to circumvent the testimony of prosecutrix, which has already been recorded by learned trial Court. Offence under Section 376 IPC is non compoundable and if any compromise has been arrived at in between the parties, it carries no legal weight. A novel method appears to have been adopted by petitioners by filing an application under Section 311 Cr.P.C. just to extract favour from the prosecutrix, who is already residing with petitioner No.1-Mandeep as per the contents of compromise (Annexure P-1). Even otherwise, it is pretty settled and has also been observed by Hon'ble Apex Court in the case captioned as **Narinder Singh and others v. State of Punjab and another; 2014 (2) RCR (Criminal) 482;** that heinous and serious offences of mental depravity or offences like murder, rape, dacoity etc are not private in nature and have a serious impact on society. No doubt, the court can summon and examine or recall or re-examine any such person if his/her evidence appears to it to be essential to the just decision of the case. But in the case in hand, by moving an application under Section 311 Cr.P.C. right of prosecution is going to scuttle down.

5. Accordingly, this Court does not find any merit in the instant petition, as such the same is dismissed.

MAY 18, 2015
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(JASPAL SINGH)
JUDGE