

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

Criminal Revision No. 290 of 2015
Date of decision : 27.01.2015

Raj Kumar

...Petitioner

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE MEHINDER SINGH SULLAR

Present: Mr. Rakesh Dhiman, Advocate,
for the petitioner.

Mehinder Singh Sullar, J. (Oral)

The matrix of the facts and material, which needs a necessary mention, for the limited purpose of deciding the core controversy involved in the instant revision petition and emanating from the record, are that, initially a criminal case was registered against petitioner-accused Raj Kumar son of Jhaman Lal, vide FIR No. 232 dated 05.05.2013, on accusation of having committed the offences punishable under Sections 326-A and 302 IPC, by the police of Police Station Sector 5, Gurgaon.

2. After completion of the investigation of the case, the police submitted the final police report (challan). Consequently, the petitioner-accused was charge-sheeted for the commission of the indicated offences and the case was slated for evidence of the prosecution by the trial Court.

Sequelly, the prosecution concluded its entire evidence and case was listed

for defence evidence. Thereafter, an application under Section 311 Cr.P.C., to recall PW2 SI Balbir Singh for further cross-examination, filed by the petitioner-accused was dismissed, by means of impugned order dated 19.01.2015, by the trial Court.

3. Aggrieved thereby, the petitioner-accused has preferred the present revision petition, invoking the provisions of under Section 401 Cr.P.C.

4. Having heard the learned counsel for the petitioner, having gone through the record, with his valuable assistance and after bestowal of thoughts over the entire matter, to my mind, there is no merit and the present petition deserves to be dismissed, for the reasons mentioned here-in-below.

5. Ex facie, the argument of learned counsel that since certain relevant questions were required to be put, so, recalling of PW2 was essential for the just decision of the case, is not only devoid of merit but misplaced as well.

6. As is evident from the record that a criminal case was registered against the petitioner-accused, vide FIR No.232 dated 05.05.2013, on accusation of having committed the offences punishable under Sections 326-A and 302 IPC, by the police. Having completed all the codal/statutory formalities of trial, as soon as, the case was listed for defence evidence, in the meantime, an application under Section 311 Cr.P.C., to recall PW2 SI Balbir Singh for further cross-examination, moved by the petitioner-accused was dismissed, by virtue of impugned order dated 19.01.2015, by the trial Court.

7. What cannot possibly be disputed here is that the petitioner-accused, filed an application to recall the pointed witness only on the

ground that inadvertently some important and material questions were not put by the defence counsel at the time of examination of the witnesses. What are the nature of such questions, how and in what manner those undisclosed questions are relevant to decide the real controversy between the parties remains unfolded mystery. The application filed by the petitioner was as vague as anything. It is now well settled principle of law that the witnesses cannot be recalled for further cross-examination in a routine manner and at the sweet will of the accused. Such witnesses can only be called if the Court considered their evidence to be essential for effectively deciding the case and not otherwise and that too on strong reasons/grounds, in view of ratio of law laid down by Hon'ble Apex Court in case Rajaram Prasad Yadav vs. State of Bihar and another, 2013(3) R.C.R. (Criminal) 726.

8. Moreover, the trial Court has examined the matter in the right perspective and dismissed the application under Section 311 Cr.P.C. of the petitioner, at this belated stage, by way of impugned order dated 19.01.2015, the operative part of which is as under: -

“With due regards to the rival contentions and facts on record, this court find no merit in the application moved at the stage of defence evidence because of two reasons. Firstly, there is nothing in the application in question as to what all are the points which learned defence counsel could not ask the witness the availability of which would help this court for proper adjudication. In fact, the application as such is very vague, which, devoid of merit. Secondly, PW2 Balbir Singh, PW1 ASI Babu Lal and PW3 Dr. Amit Kumar were examined on dated 9.10.214 in the presence of learned counsel for the accused, who had cross-examined these witnesses as per his desire. Now, by moving the present application, defence requires this court to allow him to further cross-examine the witness already examined. Here, it is not out of place to mention that the court has power to recall a witness at any time for the purpose of further examination. However, the court must be satisfied that such recalling and re-examination of the witness must be essential to the just disposal and adjudication of the case. In State

of M.P. Vs. Pattu, 2001 Criminal Law Journal 3217 (3226). Hon'ble MP High Court observed that merely because in cross-examination, the counsel for the accused did not put questions which ought to have been put is not a ground for, to recalling the witnesses for cross-examination. In Johnson Vs. State of Kerala, 1997 Criminal Law Journal, 1228 (Kerala) (DB), it has been held that the recalling of witness with intention to undermine the prosecution's case, is not permissible. Since, in the instant case, defence wants to recall the witness to put such questions which it could not put while cross-examining the witness earlier in view of the law discussed, such application cannot be allowed as non-putting of questions which ought to have been put, is not a ground for recalling and otherwise also, allowing of this application would undermine the prosecution's case which is not permissible. Here, it is also apt to note that the judicial discretion which a court can exercise under section 311 Cr.P.C. should be invoked when court is satisfied that examination further is must in the peculiar facts and circumstances of the case but such discretion is not to be exercised in favour of a party, who moves an application as an afterthought. Reliance to this effect is placed on the law laid down by our Hon'ble High Court in Ravinder Vs. State of Haryana, 2011(2) RCR (Criminal) 393. Since, in the case in hand, apparently, the application is a result of an afterthought and is also vague in its contents, so, this court is not inclined to accept the same.

In view of the foregoing discussion, the instant application is dismissed”

9. Meaning thereby, the trial Court, has rightly negated the claim of the petitioner-accused and correctly recorded the cogent grounds in this relevant behalf. Therefore, no interference is warranted in the impugned order. Such impugned order, containing valid reasons, cannot possibly be interfered with, in exercise of limited revisional jurisdiction of this Court, unless and until, the same is illegal, perverse and without jurisdiction. Since no such patent illegality or legal infirmity has been pointed out by the learned counsel for the petitioner, so, the impugned order deserves to be and is hereby maintained in the obtaining circumstances of the case.

10. No other point, worth consideration, has either been urged or pressed by the learned counsel for the petitioner.

11. In the light of aforesaid reasons and without commenting further anything on merits, lest it may prejudice the case of either side during the course of trial of main case, as there is no merit, therefore, the instant revision petition filed by the petitioner is hereby dismissed as such.

January 27, 2015

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(Mehinder Singh Sullar)
Judge