

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

Crl. Rev. No.3016 of 2015

Date of Decision: 31.08.2015

Som Dev

....Petitioner

Versus

State of Haryana

....Respondent

BEFORE :- HON'BLE MRS. JUSTICE DAYA CHAUDHARY

- 1. Whether reporters of local newspapers may be allowed to see the judgment ? (Yes/No)**
- 2. To be referred to reporters or not ? (Yes/No)**
- 3. Whether the judgment should be reported in the Digest ? (Yes/No)**

Present:- Mr. Madan Sandhu, Advocate
for the petitioner.

DAYA CHAUDHARY, J.

The present revision petition has been filed against the order dated 24.07.2015 passed by the Additional Sessions Judge, Kurukshetra, whereby, the application moved by the petitioner under Section 311 Cr.P.C for re-cross examination of witnesses Anchal Saini (PW-3) and Devender Kumar (PW-4) has been dismissed.

Briefly, the facts of the case, as made out by the petitioner in the present petition, is that he is facing trial in Session Case No.91 of 2014 in FIR No.150 dated 11.03.2014 under Sections 323, 363, 366-A, 376 IPC and Section 4 of the POCSO Act at Police Station City Thanesar. The petitioner is in custody since 03.05.2014. The FIR, in question, was registered on the basis of statement of prosecutrix. As per allegations, the prosecutrix was 15½ years of age and was examined as PW-3 and her father, namely, Sh. Devender Kumar was examined as PW-4 on

10.09.2014 before the Additional Sessions Judge, Kurukshetra. Some of the prosecution witnesses were also examined. However, during pendency of the trial, the petitioner moved an application under Section 311 Cr.P.C for permission to re-cross-examine PW-3 Anchal Saini as she could not be cross examined about her identity which was doubtful and PW-4 Devender Kumar as he could not be cross-examined on the part of writing by the counsel of the revisionist-petitioner.

Learned counsel for the petitioner submits that the purpose of Section 311 Cr.P.C is to discover truth for administering fair trial, which can be exercised by summoning any person at any stage of inquiry, trial or other proceedings under the Code. Said witnesses were examined but they were not properly cross-examined. Learned counsel also submits that their re-cross-examination is necessary for just decision of the case and no prejudice is going to be caused to the other party. The purpose is not to fill up the *lacuna* but still, the application moved by the petitioner has been declined.

Heard the arguments of learned counsel for the petitioner and have also perused the impugned order as well as other documents available on the file.

The application under Section 311 Cr.P.C has been moved by the petitioner for re-cross-examination of PW-3 and P-4 as the identity of the prosecutrix was doubtful and their re-cross-examination is necessary for just decision of the case. The application moved by the petitioner under Section 311 Cr.P.C has been dismissed by the Additional Sessions Judge, Kurukshetra on the ground that the said witnesses have already been cross-examined and specific questions were put to the victim regarding statement Ex.P12. Similarly, Devender Kumar PW-4 was also properly cross-examined. The defence has availed full opportunity for cross-

examining the said witnesses.

Admittedly, the testimony of victim PW-3 was recorded on 10.09.2014 and her father Devender Kumar PW-4 was also examined on the same day. They were cross examined at length and specific questions were put to them which were duly answered. It is not the case of the petitioner in the application that the identity of the prosecutrix was doubtful, as this fact has not been mentioned in the application. It was specifically mentioned in the statement that the prosecutrix was born in Village Kalayat, District Kaithal and she studied up to 9th standard in MDN School, Kalayat and at that time, she was residing in District Kurukshetra for the last one year. Not only the statement was recorded but other documents were also got exhibited on the file by the prosecutrix bearing her signatures.

On perusal of application moved under Section 311 Cr.P.C, it appears that nothing has been mentioned therein as to how the identity of the prosecutrix was doubtful and how their re-cross-examination is necessary for just decision of the case. Moreover, even in the arguments raised by learned counsel for the petitioner, it has not been pointed out as to how the identity of the prosecutrix is doubtful.

As per provisions of Section 311 Cr.P.C., no doubt, it is discretion of the Court to summon any witness for examination when the Court comes to the conclusion that it is essential for just decision of the case but the discretion conferred upon the Court is to be exercised judiciously, in case, the Court comes to the conclusion that the same is necessary for reaching to the conclusion that it is necessary for just decision of the case. Section 311 Cr.P.C is in two parts. In the first part, it is the discretion of the Court to summon any witness for examination, whereas, in the second part, it is the mandatory duty, which is assigned to

the Court to summon or recall any witness, who is stated to be in a position to reveal the relevant facts of the case, in case, the Court thinks that it is necessary for just decision of the case.

The only purpose for re-calling of PW-3 and PW-4 is that the identity of the prosecutrix could not be ascertained. Earlier counsel has already cross-examined the said witnesses on all points and subsequently, the application has been moved, whereas, even the statement of accused under Section 313 Cr.P.C has been recorded. The purpose appears to delay the proceedings as the trial is at the advance stage. Moreover, the defence counsel has already availed effective opportunity to cross-examine the said witnesses and specific questions were also put to them which were duly answered. The application under Section 311 Cr.P.C has been moved only on the ground that the cross-examination was done by the earlier counsel and their re-cross-examination is not going to help the petitioner in any manner due to the change of counsel. Neither a case has been made out that the re-cross-examination of the said witnesses is necessary nor it has been pointed out in the application as well as in the arguments advanced as to how the identity of the prosecutrix is doubtful.

Hence, there is no merit in the contentions raised by learned counsel for the petitioner and the present petition, being devoid of any merit, is hereby dismissed.

31.08.2015
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(DAYA CHAUDHARY)
JUDGE