

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

**Crl. Revision No. 3652 of 2015 (O&M)
Date of decision : 16.11.2015**

Balwinder Singh

.....Petitioner(s)

Versus

State of Punjab

...Respondent(s)

CORAM: HON'BLE MRS. JUSTICE ANITA CHAUDHRY

Present: Mr. Deepak Girotra, Advocate
for the petitioners.

Mr. G.S. Salwara, DAG, Haryana.

Mr. Jaininder Saini, Advocate
for the complainant.

ANITA CHAUDHRY, J.

This is a revision filed by the accused as his application for summoning Dr. Amanpreet Kaur has been dismissed by the trial Court.

I have heard counsel for both the sides.

The counsel for the petitioner submits that the accused had moved an application before the trial Court for getting the ossification test of the prosecutrix on 11.08.2015 which was allowed. It was urged that directions were given to the prosecutrix to get the ossification test from Guru Govind Singh Medical College and Hospital, Faridkot on 17.08.2015 at

9:00 A.M. and the case was adjourned for awaiting the report and for defence evidence. It was urged that the ossification report was not received and the Court ordered the summoning of the concerned doctor for 28.08.2015 but the trial Court closed his evidence on the next day saying that no list of witnesses had been filed. It was urged that thereafter, the prosecution moved an application for recalling Dr. Deepika examined as PW and the case remained pending for consideration on that application which was finally allowed on 10.09.2015. It was urged that the accused moved an application on the same day under Section 311 Cr.P.C. which has been dismissed by the trial Court. It was urged that the accused could not have laid hands on the ossification report and the order passed by the Court is illegal and an opportunity be given to him to examine the doctor.

The complainant side has appeared and opposes the prayer. The petition is also opposed by the State. It was urged that in the statement under Section 313 Cr.P.C. no plea was taken by the accused that the prosecutrix was over 18 years of age and the petitioner wants to fill up the lacuna in the case.

The record of the file was called for as the submissions which were being made on behalf of both the sides appeared contradictory. A perusal of the record shows that the prayer made by the accused for getting the ossification test on

the prosecutrix was allowed when the case was at the stage of defence evidence. The Court had then directed the prosecutrix to appear in the hospital concerned. Time & date was fixed for her appearance in the hospital. The Court had also adjourned the case for awaiting the ossification report. When the same was not received, it had ordered the summoning of the doctor for 28.08.2015. It also posted the case for remaining evidence of the accused and passed the following order:-

" No prosecution witness has come present today. Perusal of the file shows that vide order dated 12.08.2015, permission was granted to the accused on his application moved for ossification test of the prosecutrix Soma Rani. Thereafter, the case was fixed up for awaiting the report of the Doctor regarding ossification test but neither any report has been placed on record. No list of witnesses has been filed on behalf of the accused for examining any witness in defence evidence. Keeping in view the last zimny order on file, the defence evidence on behalf of the accused is ordered to be closed and case stands adjourned to 03.09.2015 for final arguments."

The zimni orders subsequent to 28.08.2015 show that thereafter, the prosecution moved an application under Section 311 Cr.P.C. for recalling Deepika PW-6 which was allowed as it noticed that the prosecution had closed its evidence without examining her. Thereafter, the doctor was examined and statement under Section 313 Cr.P.C. was again recorded to

incorporate the evidence which was subsequently led. The accused in his statement under Section 313 Cr.P.C. stated that he wanted to lead defence evidence but at page no.151 there is another statement recorded on the same day that the accused was closing his evidence. The application filed by the accused under Section 311 Cr.P.C. had been declined and the concluding paragraph reads as under:-

"The perusal of the file shows that earlier, similar application was moved on behalf of the accused and the same was allowed by this court vide orders dated 12.08.2015, while giving directions to the prosecutrix to remain present in Guru Gobind Singh Medical College, Faridkot on 17.08.2015 at 9:00 AM. Thereafter, case was fixed up for awaiting the report of Ossification test of the prosecutrix. Despite the sufficient time given to the accused, nothing was produced on file on behalf of the accused i.e. Neither the report of Ossification test, nor the name of the doctor, who had conducted the Ossification test of the prosecutrix and ultimately, the defence of the accused was closed by order of the Court on 28.08.2015. Since similar application has already been decided by this court and defence evidence was closed by order of the court, as such, this court cannot review its own order and only revision should have been filed on behalf of the accused against order passed by the undersigned dated 28.08.2015, vide which the defence evidence was closed by order. Keeping in view the previous Zimni orders on file, no ground is made out for allowing the application under reference, as such, the same is ordered to be declined and the file is ordered to be put on 22.09.2015, the date already fixed for recording the prosecution evidence."

A perusal of the orders show that the Court had passed hasty orders and had forgotten that after sending the prosecutrix for her ossification test it had adjourned the case for awaiting the report of the doctor. The report was not received and instead of sending a reminder to the Incharge/CMO of the hospital, it adjourned case for remaining defence evidence.

The accused could not have known the name of the doctor who had conducted the ossification test at that time. The hospital would not have handed over the report to the accused. Then when the prosecution was given an opportunity to examine Dr. Deepika and statement of accused was again recorded by way of rebuttal. The Court was bound to grant adjournment for evidence of the accused. The order deserves to be set aside. The petitioner would appear before the trial Court on 01.12.2015 and the trial Court would call the report from the hospital concerned. Notice will also be issued to Dr. Amanpreet Kaur, Guru Gobind Singh Medical College for the date convenient to the trial Court.

The petition is allowed. Record be sent back expeditiously.

16.11.2015
sunil

(ANITA CHAUDHRY)
JUDGE