

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

CRR-785-2015

Date of decision: 9.3.2015

Naveen and another

...Petitioners

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MRS.JUSTICE SNEH PRASHAR

Present: Mr.N.K.Malhotra, Advocate for the petitioners

SNEH PRASHAR, J.

The present revision petition has been filed against the impugned order dated 22.12.2014, passed by the learned Additional Sessions Judge, Rohtak, vide which application under Section 311 of the Code of Criminal Procedure filed by the petitioners was dismissed.

The petitioners are facing trial for commission of offence punishable under Section 376(D) of the Indian Penal Code and Section 4 of the Protection of Children from Sexual Offences Act.

Mr.N.K.Malhotra, counsel representing the petitioners has been heard.

It is submitted by learned counsel for the petitioners that

during trial of the case, prosecutrix and her mother were examined as PW2 and PW3 respectively. On 7.10.2014 they were cross-examined by the petitioners but certain relevant questions which would have unveiled the truth could not be put to them. There were also love letters written by the prosecutrix, which were required to be put to her, but counsel for the petitioners did not do so. An application under Section 311 Cr.P.C. was filed by the petitioners before the learned trial court for recalling of the prosecutrix and her mother, but the same was dismissed. It is asserted that further cross-examination of the prosecutrix and her mother is necessary for just and proper decision of the case and that summoning of these witnesses will not prejudice the case of the prosecution.

To support his arguments, learned counsel relied upon **Vikas Sureshrao Waghmare vs. Moreshwar Bhuausaheb Kadam 2011(2) Recent Criminal Reports (Criminal) 632 and Mannan Sk. And others vs. State of West Bengal and another 2014(4) Recent Criminal Reports (Crl.) 617.**

In **Vikas Sureshraro Waghmare's case (supra)**, in a case under Section 138 Cr.P.C., recalling of the complainant for cross-examination was allowed since some vital questions in respect of certain documents could not be put to him during his cross-examination.

In **Mannan Sk. and others' case (supra)**, finding that oversight of the prosecution in examining the witness was not

appreciable and that the evidence of the witness was necessary for just decision of the case, the witness was recalled.

Reverting to the instant case, admittedly the petitioners were duly represented by a counsel. They cross-examined the witnesses thoroughly. The allegation of the petitioners in the application moved by them for recalling of the prosecution witnesses was that their counsel was having intimacy with the prosecution witnesses because of which the cross-examination was not done properly and diligently. It is not the case of the petitioners that they at any point of time had complained to any authority disputing the credibility of their counsel. Not even an affidavit to the said effect was filed alongwith the application as is mentioned in the impugned order passed by the learned Additional Sessions Judge. More so, the prayer made by the petitioner is completely vague. They did not mention the questions which were vital for just and proper decision of the case, but were not put to the prosecutrix or her mother. The particulars of the letters, if any, which were allegedly to be put to the prosecutrix were neither stated nor had been placed on record. Apparently the facts of the present case are distinguishable from the facts of the cases relied upon by learned counsel for the petitioners and therefore, on such ambiguous contentions of the petitioners, they cannot be allowed to recall the prosecutrix and her mother for cross-examination, especially when

they have already availed the opportunity to do so.

Finding no merit in the present petition, the same is
hereby dismissed.

9.3.2015
gsv

(SNEH PRASHAR)
JUDGE