

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

CRR No. 881 of 2015

Date of decision: March 12, 2015

Sumit

.... Petitioner

Versus

State of Haryana and others

.... Respondents

CORAM: HON'BLE MR. JUSTICE JASPAL SINGH

Present: Mr. Naveen Singh Panwar, Advocate
for the petitioner.

Jaspal Singh, J.(Oral)

Challenge in this revision petition is to impugned order dated 21.02.2015 passed by learned Additional Sessions Judge, Sonapat vide which application preferred by the petitioner under Section 311 Cr.P.C. for recalling prosecution witness No.5 (prosecutrix) for further cross-examination has been dismissed.

The contention of learned counsel for the petitioner is that statement of prosecutrix was recorded before learned trial Court on August 07, 2014 but at that time Mr. Vishav Bandhu, Advocate appearing on behalf of petitioner-Sumit could not cross-examine her properly and effectitively, as he was not feeling well. The material questions/points with regard to her medical, place of occurrence and FSL report could not be put to her. On these material points the prosecutrix was required to be cross-examined, which is necessary for the proper and just decision of the case and to prove the innocence of the accused. The application has simply been dismissed by learned trial Court on the ground that prosecutrix has already been subjected to a lengthy cross-examination and all the material questions have been put to her that too by availing sufficient opportunity and further that application has been moved by the applicant just to fill up the lacunae which cannot be

allowed. But Section 311 Cr.P.C enjoins upon the Court to permit a party to adduce additional evidence as well as to further cross-examine the witnesses. The future of the petitioner is at stake.

While concluding arguments, learned counsel for the petitioner has submitted that an opportunity be afforded to the petitioner for further cross-examination of prosecutrix after setting aside the impugned order.

This Court has given an anxious thought to the submissions made by learned counsel for the petitioner and have perused the police file.

Undisputedly, FIR No. 24 dated 22.05.2014 under Sections 365, 376-D and 506 IPC as well as Section 4 of POSCO Act was registered against five persons. The petitioner was arrested, subjected to custodial interrogation and there being prima facie evidence appearing against him, challan against him and others was presented. Subsequently, he was charge sheeted to face trial for commission of offences referred above.

During trial prosecutrix appeared and examined herself as PW-5. She was subjected to a lengthy and probed cross-examination as is evident from the copy of her statement annexed with the petition. There is nothing on record to suggest that learned counsel appearing on behalf of petitioner before learned trial Court was not feeling well. No such request was made before learned trial Court. In fact, it appears that after the examination of prosecutrix as PW-5 before learned trial Court, petitioner or his near and dears have prevailed upon the prosecutrix to arrive at a compromise and to achieve that object, which resulted into filing of petition for recalling the prosecutrix for further cross-examination. Otherwise there is nothing on record to suggest that she could not be effectively cross-examined.

In the light what has been discussed above, the instant revision petition is devoid of any merits is hereby, dismissed.

March 12, 2015

**(JASPAL SINGH)
JUDGE**