

In the High Court of Punjab and Haryana at Chandigarh

**Crl. Misc. No. M-22481 of 2016
Date of Decision: 08.7.2016**

Sandeep Singh @ Simpy

.....Petitioner

Versus

State of Punjab

....Respondent

CORAM: HON'BLE MRS. JUSTICE ANITA CHAUDHRY

Present: Mr. Gourav Goel, Advocate
for the petitioner.

ANITA CHAUDHRY, J(ORAL)

The petitioner is seeking quashing of the order dated 28.4.2016 passed by the Additional Sessions Judge, Patiala whereby application Annexure P-2 filed under Section 311 Cr.P.C. seeking re-examination of the prosecutrix has been dismissed by the trial Court.

It would be necessary to refer to the factual matrix. Allegations of ravishment have been made by a 14 years old girl against the petitioner. The girl had come to her maternal aunt's house and the petitioner was living nearby. The father of the victim arrived on the scene and he had given a *dang* blow to the petitioner.

The statement of the prosecutrix had been recorded on 11.3.2016. The accused was represented by a counsel and the cross-examination of the prosecutrix runs into more than two pages. On 30.3.2016 an application Annexure P-2 was moved by the petitioner that he had changed his counsel on the last date and the cross-examination of the

prosecutrix had been conducted by the previous counsel and he had failed to put material questions pertaining to the genesis of the occurrence as well as the medical evidence and, therefore, her further examination was necessary. It was pleaded that since the case was at the threshold and only two witnesses had been examined, therefore, opportunity be given for further cross-examination of the prosecutrix.

Counsel for the petitioner refers to '***Rajiv Sood versus State of Punjab 2016(1) R.C.R. (Criminal) 67***' and urges that the trial Court did not appreciate the true facts and the settled position of law was that the accused must be given full opportunity and in the present case the material evidence was left out which goes to the core of the case and therefore recall was necessary.

State counsel submits that the victim of rape was a 14 years old child and lengthy cross-examination was effected and the applicant has not disclosed the material questions left out which were to be put to the child witness and the victim cannot be called to the Court again and again only because of change of counsel.

In *Rajiv Sood's* case (supra) an application for recall of the witness had been filed in a case which was registered under the NDPS Act. Considering the peculiar facts and circumstances of the case as noted in para 12 of the judgment the petition was allowed. The facts of the present case are entirely different.

Mere change of counsel is not a ground for recalling the witness again. The accused was represented by the counsel who had cross-examined the witness for sufficiently long time. He was given due opportunity and was not under any handicap. See '***Ag vs. Shiv Kumar***

Yadav' Criminal Appeal No. 1191-1192 of 2015 decided by the Supreme Court on 10.9.2015.

No ground for recall is made out.

Petition is dismissed.

**(ANITA CHAUDHRY)
JUDGE**

**July 08, 2016
Gurpreet**