

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

CRM-M-32927 of 2016 (O&M)

Date of decision : 27.09.2016

Balvinder Singh @ Binder

..... Petitioner

VS

Raman

..... Respondent

CORAM : HON'BLE MR.JUSTICE AJAY TEWARI

Present : Mr. B.S.Dhillon, Advocate
for the petitioner.

AJAY TEWARI, J.(ORAL)

By this petition the petitioner has challenged the order declining an application under Section 311 Cr.P.C. to recall the complainant-respondent for further cross examination.

The ground taken is that the earlier counsel omitted to ask certain very important questions. The cross examination had been conducted in August, 2015 and this application has been moved after a period of 11 months. I had put it to the learned counsel for the petitioner on the last date whether the petitioner was agreeable to make a fixed deposit of the cheque amount of Rs.10.00 lacs and to make another deposit of Rs.80,000/- in favour of the Court and in case the complaint is to be allowed that amount would be paid to the complainant and in case the complaint is dismissed the money would be handed over to the petitioner.

Matter was adjourned to today but learned counsel for the petitioner has stated that the petitioner is unable to make the deposit as he is in jail. He has relied upon ***AG Vs. Shiv Kumar Yadav and another, passed in CRA-1187-1188 of 2015, decided on 15.09.2015***, wherein it has been held as follows in para 15 :-

“15. The above observations cannot be read as laying down any inflexible rule to routinely permit a recall on the ground that cross-examination was not proper for reasons attributable to a counsel. While advancement of justice remains the prime object of law, it cannot be understood that recall can be allowed for the asking or reasons related to mere convenience. It has normally to be presumed that the counsel conducting a case is competent particularly when a counsel is appointed by choice of a litigant. Taken to its logical end, the principle that a retrial must follow on every change of a counsel, can have serious consequences on conduct of trials and the criminal justice system.”

In this view of the matter I am not persuaded to accept the prayer.

Petition is dismissed.

Since the main case has been decided, the pending criminal miscellaneous application, if any, also stands disposed of.

27.09.2016
pooja sharma-I

(AJAY TEWARI)
JUDGE

Whether speaking/reasoned

Yes/No

Whether Reportable :

Yes/No