

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-33713-2015 (O&M)

Date of Decision:- 15.12.2016

Pardeep Kumar

....Petitioner

Versus

State of Punjab and another

....Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

**Present: Mr. Bhavyadeep Walia, Advocate
for the petitioner.**

Mr. APS Gill, AAG, Punjab.

**Mr. Rajesh Gupta, Advocate
for respondent No.2.**

RITU BAHRI, J. (Oral)

Present petition is for quashing of order dated 16.09.2015 (Annexure P-6) whereby an application for recalling the respondent No.2/complainant has been dismissed.

The FIR had been registered on the allegations of committing gang rape against accused Bikram Kumar, Pardeep Kumar and Prince Kumar. In the trial, after completing the prosecution evidence, the case was fixed for questioning of accused under Section 313 Cr.P.C.. The prosecutrix as well as accused Pardeep Kumar moved separate applications for re-examination as well as further cross-examination of prosecutrix. Both the said applications have been dismissed, vide order dated 19.09.2015

PW3 Dr. Sunita was examined on 26.08.2015 and further examination was deferred for want of chemical examiner report. She was further examined on 09.09.2015 after receipt of chemical examiner report and in the meantime, the prosecutrix was examined on 26.08.2015. In her cross-examination dated 09.09.2015, Dr. Sunita PW3 gave opinion that probable duration of injuries sustained by prosecutrix at the time of alleged incident was about 12 hours. Dr. Sunita, was examined-in-chief as per (Annexure P-4) where she brought the MLR registered in Court and handed-over other documents to the police with sample parcels for depositing the same with Chemical Examiner. She had medico-legally examined the patient Aarti Devi and proved the MLR. Thereafter on 09.09.2015, she appeared again as PW3 and stated that in view of the chemical examiner the sexual intercourse has been taken place. Thereafter, she was cross-examined and gave her opinion that redness over the cheek of prosecutrix had turned blue and this would be after 12 hours. She further gave her opinion on the abrasion in the right fore finger to be fresh and the possibilities of these injuries within 12 hours and the contusion marks on the neck and bruises, left leg and thigh were red in colour and duration could be 12 hours.

Learned counsel for the petitioner has argued that as per the version given by the respondent No.2 and opinion given by the doctor in her cross-examination, it creates a doubt about the date and time of the occurrence, which has been created by the prosecutrix. The MLR was conducted on 17.04.2015 and the injuries as per opinion was 12 hours before, which means as per doctor respondent No.2 has suffered injuries on

examination was essential.

After taking into consideration the facts and all the contentions pertaining to appreciation of evidence, learned Additional Sessions Judge, Pathankot, has dismissed the application, by virtue of impugned order dated 16.0.2015, which in substance is as under: -

“(15). Now coming to request made by accused for further cross-examination of prosecutrix on various grounds: -

1. The first ground was non-availability of MLR, the copy whereof was supplied to accused on 09.09.2015 at the time of cross-examination of Dr. Sunita PW3. It is relevant to mention here that on 26.08.2015, when Dr. Sunita PW3 was partly examined, she explained on oath the injuries allegedly sustained by prosecutrix and on that day, she brought the original MLR was handed over to police with sample parcel of vaginal swab. Such copy was not attached with police challan and it was represented to the Court that the copy of MLR was sent with sample parcel. On 09.09.2015, before recording the statement of Dr. Sunita PW3, the copy of MLR was supplied to the accused and thereafter, her further examination was recorded.

2. In afore mentioned circumstances, it cannot be said that the accused were taken by surprise, when the copy of MLR was produced upon record. On this ground, the demand made by accused for further cross-examination of prosecutrix is not sustainable.

3. The next ground of accused is regarding previous conduct of prosecutrix. For such purpose, the accused got effective opportunity on 26.08.2015 to cross-examine prosecutrix and now she cannot be summoned again for such purpose.

4. The third ground made by accused is regarding certain revelations made by investigating officers in their cross-examination and the clarification is sought to be required from prosecutrix. It is not appropriate stage to adjudicate the facts narrated in the cross-examination of prosecution witnesses, otherwise, it will amount to expression of opinion prior to decision of the case. Thus, on such ground also, the accused is not entitled for further cross-examination of prosecutrix.

For the reasons recorded above, the request made by accused for allowing further cross-examination of prosecutrix is not sustainable.

(16). At this outset, learned counsel for prosecutrix has argued that the matter has been compromised between the parties and thus, it necessitated the moving of applications for further examination of prosecutrix. This is again not a valid ground to allow further examination of prosecutrix. The parties cannot be

allowed to circumvent the statutory provision of law and to invoke power of court for the purpose, which is not legally sustainable.”

Meaning thereby, the learned Additional Sessions Judge, Pathankot, has examined the matter in right perspective, recorded the cogent grounds and correctly dismissed the application filed by the petitioner.

Learned counsel for the petitioner did not point out any material/reasons, much less cogent, so as to warrant any interference in the impugned order. .

Such order, containing valid reasons, cannot possibly be interfered with by this Court, in exercise of limited jurisdiction of this Court under Section 482 Cr.P.C., unless and until, the same is illegal, perverse and without jurisdiction. Since, no such patent illegality or legal infirmity has been pointed out by the learned counsel for the petitioner, so, the impugned order deserves to be and is hereby maintained in the obtaining circumstances of the case.

In the light of aforesaid reasons, as there is no merit, therefore, the instant petition is hereby dismissed as such.

December 15, 2016
naresh.k

(**RITU BAHRI**)
JUDGE

Whether speaking/reasoned	Yes
Whether reportable	No