

In the High Court of Punjab and Haryana at Chandigarh

Crl. Misc. No. M-34981 of 2016

Date of Decision: 30.9.2016

Mange Ram

.....Petitioner

Versus

State of Haryana

.....Respondent

CORAM: HON'BLE MRS. JUSTICE ANITA CHAUDHRY

Present: Mr. R.S.Budhwar, Advocate
for the petitioner.

ANITA CHAUDHRY, J(ORAL)

The petitioner is seeking quashing of the order dated 31.8.2016 (Annexure P-5) passed by the Additional Sessions Judge vide which his application under Section 311 Cr.P.C. for recalling PW-4 for further cross-examination, had been dismissed.

A case was registered on a complaint made by Rajesh Kumar under Section 302, 304-B IPC. The sister of the complainant was married to the petitioner in 2009. She died an unnatural death in the matrimonial home.

It is necessary to notice how the trial proceeded. Challan was presented on 4.6.2015. Charge was framed and Rajesh was examined as PW-4 on 22.9.2015. An application for recall for further cross-examination was filed by the petitioner on July 2016 on the plea that some questions had been left out and those were necessary for the just and proper decision of the case. The trial Court after hearing both the sides dismissed the application observing as under:-

Kumar for further cross-examination on the ground that some material questions were left which are necessary for just and proper decision of the case. Under Section 311 of Cr.P.C., the Court has been empowered to recall a witness at any stage of proceedings, where it is essential to do so for the just decision of the case. In the instant case PW4 Rajesh Kumar has been cross examined at length on each and every aspect of the matter. The applicant/accused has not even mentioned in the application as to what material questions have been left, which are necessary for just and proper decision of the case. Hence, no ground to recall the said witness is made out. Finding no merits the application stands dismissed.”

I have heard the counsel for the petitioner at length and find no merit in the application.

The object of the provision for recall of a witness is contained in Section 311 Cr.P.C. The power can be exercised to prevent injustice. The Court can exercise it only when it feels that injustice was caused to a party. The legislature in its wisdom had left the power undefined and the scope of the power has to be considered from case to case. The petitioner was represented by a counsel from the very beginning. Due opportunity had been granted for conducting the cross-examination and he was under no handicap. The trial Court has rejected the application of the petitioner on the ground that it had failed to even explain the material aspect that was left out. The prayer for recall is not to be allowed on the mere asking. Merely observing that the recall was necessary is not enough. The power of recall is not a matter of course and it can be exercised only to prevent failure of

justice and not arbitrarily.

I find no infirmity in the order passed by the Court below.

There is no merit in the petition and is dismissed.

(ANITA CHAUDHRY)
JUDGE

September 30, 2016
Gurpreet

Whether speaking/reasoned	:	Yes
Whether reportable	:	No