

In the High Court of Punjab and Haryana at Chandigarh

**Crl. Misc. No. M-44429 of 2016
Date of Decision: 14.12.2016**

Surjit Lal @ Sodhi

.....Petitioner

Versus

State of Punjab and another

.....Respondents

CORAM: HON'BLE MRS. JUSTICE ANITA CHAUDHRY

Present: Mr. Ashok Giri, Advocate
for the petitioner.

ANITA CHAUDHRY, J(ORAL)

The petitioner in this petition under Section 482 Cr.P.C. lays challenge to the order dated 25.10.2016 vide which his application seeking recall of two witnesses in a rape case has been declined.

I have heard the counsel at great length.

The incident pertains to the year 2012. Challan was presented and the trial had started and the statement of the victim had been recorded on 16.7.2015. The cross-examination was deferred on the request of the defence as the counsel had been engaged only on that day. The trial Court adjourned the case and summoned the prosecutrix again and her statement was completed on 30.7.2015. A year later, the accused filed an application seeking recall of the prosecutrix and Balwinder Kaur on the plea that they had engaged a new counsel and certain facts had come to the notice and material questions could not be put to the witnesses and therefore they wanted their recall.

The trial Court dismissed the application relying upon 'AG

versus Shiv Kumar Yadav and others, 2015(4) RCR (Criminal) 312'.

The prayer for recall is primarily on the ground that there was a change of the lawyer. The Hon'ble Supreme Court had the occasion to decide the question in number of cases and in *AG vs. Shiv Kumar Yadav's case (supra)* the Apex Court in para 29 of the judgment had disapproved the view taken by the High Court which allowed the witnesses to be recalled.

It is settled that the witness cannot be recalled because there was a change of counsel nor the witnesses can be recalled to fill in the lacuna. Fair opportunity had been given to the accused. The Courts have to ensure that the victim of the crime is not unduly harassed. There is no reasons for holding that any prejudice will be caused to the accused unless the witnesses are recalled. The attempt of the petitioner is only to fill up the lacuna which cannot be allowed.

The petition is dismissed in limine.

**(ANITA CHAUDHRY)
JUDGE**

December 14, 2016
Gurpreet

Whether speaking/reasoned	:	Yes
Whether reportable	:	No