

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

Crl. Misc. No.M-5848 of 2016 (O&M)

Date of Decision: 05.04.2016

Bablu Sodhi @ Jagir Singh

.. Petitioner

Vs.

State of Punjab

.. Respondent

CORAM: HON'BLE MRS. JUSTICE ANITA CHAUDHRY

**Present:- Mr. Bikramjit Aroura, Advocate
for the petitioner.**

ANITA CHAUDHRY, J.

The petitioner is facing trial in FIR No. 181 dated 17.09.2013, registered at Police Station Sadar Amritsar. Charge under Sections 420 and 417 IPC was framed against the petitioner. During trial, prosecution examined ASI Baldev Singh, the investigating officer as PW1, Dr. Jaswinder Kaur as PW2, besides examining the complainant Naina Sharma as PW3.

The prosecution filed an application under Section 323 Cr.P.C. seeking addition of offence under Sections 376, 506 and 120-B IPC and for commitment of the case to the Sessions Court. Before that application could be taken up, an application under Section 311 Cr.P.C. was filed by the accused seeking re-call of PW1 ASI Baldev Singh and PW2 Dr. Jaswinder Kaur. The trial Court dismissed the application

vide order dated 08.10.2015. The accused challenged the order by filing a revision petition. The application was partly allowed. Dr. Jaswinder Kaur, whose cross-examination was treated as 'nil' was only ordered to be recalled.

Dis-satisfied with it, the petitioner has filed the instant petition.

I have heard learned counsel for the petitioner and have gone through the paper-book carefully.

The apprehension of the petitioner was that ASI Baldev Singh had investigated the case and while deposing in Court he gave a recount of the allegations made by the complainant and it would mean that he had become a witness of the incident and as he was not cross-examined qua those allegations by the earlier counsel, he was sought to be summoned again for cross-examination. The apprehension is totally misconceived. The revisional Court while passing the impugned order specifically took notice of the aforesaid aspect and observed as under:-

"10. PW1 Assistant Sub Inspector Baldev Singh is the Investigating Officer. He has only done investigation. It will be for the trial court to see that as to which part of statement made by the Investigating Officer during trial is relevant. Even if he has deposed about the contents of complaint made by complainant, it does not mean that Investigating Officer has become witness to the

incidents narrated or alleged in the complaint. The grievance of the counsel for the revision petitioner is that Investigating Officer has deposed in detail about the allegations contained in the complaint made by the complainant. Even if it is so, it does not mean that allegations in the complaint would be taken as proved merely because the Investigating officer has deposed about those allegations and he has not been cross examined qua those allegations.”

So far as this aspect is concerned, the revisional Court has rightly taken note of. The application filed under Section 311 Cr.P.C., is silent and the accused failed to mention as to what questions had been left out. Before this Court even they have failed to show why the recall of the witness was necessary. The petitioner was represented by a counsel. The witness was cross-examined by the defence counsel. Change of counsel cannot be a ground to re-call any witness. Section 311 of the Code was enacted to enable the Court to find out the truth whereunder any Court exercising its discretionary authority, at any stage of enquiry, trial or other proceeding can summon or examine any person in attendance or recall or re-examine any person already examined who are expected to throw light upon the matter in dispute. The provisions however cannot be invoked to fill up the lacuna, if any.

For the reasons above, there is no illegality or perversity in the impugned order passed by the revisional Court, which warrants interference by this Court. The petition is dismissed in limine.

April 05, 2016
Jiten

(ANITA CHAUDHRY)
JUDGE