

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Crl. Revn. No. 1738 of 2016

DATE OF DECISION: 09.05.2016

Surajmal

.....Petitioner

Versus

State of Haryana

.....Respondent

BEFORE:- HON'BLE MRS. JUSTICE DAYA CHAUDHARY

1. **Whether reporters of local newspaper may be allowed to see judgment? (Yes/No)**
2. **To be referred to reporters or not? (Yes/No)**
3. **Whether the judgment should be reported in the Digest? (Yes/No)**

Present:- Mr. R.N. Kush, Advocate
for the petitioner.

DAYA CHAUDHARY, J.

The present revision petition has been filed to challenge order dated 21.3.2016 passed by Additional Sessions Judge-cum-Judge Special Court for Heinous Crime against Women, Hisar, vide which, an application moved by the petitioner for recalling of PW 4 and PW 5 has been dismissed.

Learned counsel for the petitioner submits that the new counsel was engaged before the lower Court and he wanted to put certain questions to the witnesses by invoking the provisions of Section 311 Cr.P.C. A specific case was made out in the application filed for the same but still it has been dismissed. The petitioner is ready to compensate the opposite party in monetary terms and no prejudice is going to be caused to them. Learned counsel has also relied upon the judgment of this Court in

Rajiv Sood Vs. State of Punjab 2016 (1) RCR (Criminal) 67, in support of his contentions.

Heard the arguments advanced by learned counsel for the petitioner and have also gone through the impugned order as well as other documents available on the file.

A perusal of the application moved by the petitioner would show that it has simply been mentioned that he wants to further cross-examine PW-4 and PW-5 through his counsel. Nothing has been mentioned as to why the cross-examination of these witnesses is necessary. Neither any reason nor any justification has been mentioned in the application. While passing of impugned order, it has specifically been mentioned that as per testimony of prosecutrix (PW-4) and her husband (PW-5) recorded on 1.10.2015, both the witnesses were duly cross-examined by the then counsel for the petitioner. Moreover, nothing has specifically been mentioned in the application as to what material questions could not be put to them. The findings recorded in the impugned order are reproduced as under:-

“A perusal of testimony of prosecutrix (PW-4) and her husband (PW-5) Norang recorded on 01.10.2015 respectively reveal that both the witnesses were duly cross-examined on behalf of the then counsel for applicant-accused. There is no specific fact mentioned in the application as to what material questions could not be put to them. Though during arguments a novel defence is raised by learned counsel for applicant-accused that his relationship with prosecutrix were consensual. However, such a plea was never raised by accused at any stage either of investigation or trial. Such an after thought version cannot be basis for recalling the witnesses which only

amounts to filling up the lacunae.

Law is fairly settled that a party cannot seek to fill up the lacunae of the case by virtue of additional evidence.

Apex Court of land in A.G. Versus Shiv Kumar Yadav (SC) 2015 (4) RCR (Criminal) 312 has held that mere change of counsel cannot be a ground to recall the witnesses as the earlier counsel were given due opportunities and had duly conducted cross-examination. They were under no handicap. In that case, order of High Court permitting recall of witnesses for ensuring fair trial was set aside by Apex Court of the Land in trial of a rape case by holding that fairness of trial has to be seen not only on the point of view of the accused but also from the point of view of the victim and the society. It was further held that the object of provision of recall of witness is to reserve the power with the Court to prevent any injustice in the conduct of trial at any stage and this power has to be exercised only if the Court, for valid reasons, feels that injustice is caused to a party.

Furthermore, Apex Court of Land in case **Rajaram Parsad Yadav Vs. State of Bihar** 2013 (3) RCR (Criminal) 726 has laid down the principles which will have to be borne in mind while dealing with application under Section 311 of the Code of Criminal Procedure read with Section 138 of the India Evidence Act. It was observed in that case that the exercise of power under Section 311 of Code of Criminal Procedure should be resorted to only with the object to finding out the truth or obtaining proper proof for such facts which will lead to just and correct decision of the case. It was further held that

the exercise of said power cannot be dubbed as filling in lacunae in a prosecution case.”

Neither in the application nor in the argument, it has been mentioned as to what questions were to be put to the said witnesses and how the recalling of the witnesses is necessary for the just decision of the case. In absence of any specific ground, it cannot be said as to how the recalling of said witnesses is necessary.

In view of the above, no ground is made out to interfere in the impugned order passed by the Court below as no specific reason whatsoever has been mentioned in the application and without making any case for recalling of the witnesses, the provisions of Section 311 Cr.P.C. cannot be attracted.

Accordingly, there is no merit in the petition and the same being devoid of any merit is hereby dismissed.

However, the petitioner is at liberty to move an application with reasons, which have not been mentioned earlier and in case such application is moved with specific grounds, the trial Court may consider the same in accordance with law.

May 09, 2016
pooja

(DAYA CHAUDHARY)
JUDGE