IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Crl. Rev. No.2912 of 2016 (O&M)
Date of decision : 22.08.2016

Manjeet

.....Petitioner(s)

Versus

State of Haryana

...Respondent(s)

CORAM: HON'BLE MRS. JUSTICE ANITA CHAUDHRY

Present: Mr. S.P. Chahar, Advocate
for the petitioner.

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ANITA CHAUDHRY, J.

This revision is directed against the order dated 09.05.2016 vide which the Additional Sessions Judge, Jhajjar has dismissed the application filed by the accused.

Some essential facts needs elaboration. An FIR was registered against the petitioner under Section 354-D, 506 IPC and Section 12 of POCSO Act. After investigation, challan was put in and trial had started and the material witnesses had been examined on 19.11.2015. An application had been filed by the accused for recalling Devki and her mother. Before this application an application had been filed on the same ground which was withdrawn on 18.01.2016 with permission to file a fresh application. The claim made by the accused was that the prosecutrix and the accused were having an affair and the victim was his next door neighbour and she had been writing letters to him but all these questions could not be put to her at the time of her cross-examination. It was pleaded that he had

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earlier moved an application for her specimen handwriting and for preservation of the phone records. A prayer was made for her recall to elicit the truth.

The Additional Sessions Judge dismissed the application. The submission made on behalf of the Public Prosecutor was that the accused wanted to prolong the case and the accused was putting pressure for compromise. The trial Court noted the provisions contained in Section 311 Cr.P.C. and the scope thereof and dismissed the application. It noted that the ground taken by the accused was that his previous counsel had not asked the relevant questions from PW5 & PW6 while cross-examining them and it was an acknowledgment of the fact that the strategy was to fill up the lacuna and to call the prosecutrix again into the witness box which was disguise for a retrial.

I find no merit in the revision. A witness cannot be called into fill up the lacuna. A perusal of the cross-examination effected on PW-5 shows that suggestions had been made that the prosecutrix used to write letters to the accused which had been denied. The prosecutrix was also confronted with a letter Mark-D which had been denied. It appears that the accused under the disguise of the provisions contained under Section 311 Cr.P.C. only wants a retrial, which cannot be allowed.

I find no infirmity in the order. The revision is dismissed.

22.08.2016 **(ANITA CHAUDHRY)**
Sunil **JUDGE**

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No

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