

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

**Crl. Rev. No. 3818 of 2016 (O&M)
Date of decision : 20.10.2016**

Dilshad Monu and another

.....Petitioner(s)

Versus

State of Haryana

...Respondent(s)

CORAM: HON'BLE MRS. JUSTICE ANITA CHAUDHRY

Present: Mr. Anter Singh Brar, Advocate
for the petitioners.

ANITA CHAUDHRY, J.

The petitioners are facing trial in a rape case. After the prosecution had closed its evidence and the case was fixed for defence evidence, the accused have moved an application for summoning the complainant, his brother and the victim as their defence witnesses along with some more persons including the lawyer in whose presence the victim signed the affidavit, to prove that a compromise had been effected. There is a reference to a quashing petition which was filed in this Court. Notice had not been issued yet. The Co-ordinate Bench had posed a query as to whether the FIR can be quashed where the offence alleged is under Section 376 IPC.

The trial Court has dismissed the application. Aggrieved by the same, this revision has been filed.

I have heard the submissions on behalf of the petitioners. Copy of the statements of three witnesses is taken on record.

The counsel cites *Sukhwinder Singh Vs. State of Punjab (2000) 9 SCC 204* and it was urged that the victim has not supported the prosecution at the trial and it could be that the trial would end in conviction and if the compromise is brought on record that can be considered by the trial Court on the point of sentence if the Court decides otherwise. The counsel refers to para no.4 of the judgment.

The petitioners have been unable to refer to any provision under which the defence can examine the witnesses who have already appeared as prosecution witnesses. They cannot be summoned again as a defence witness. The victim is stated to be a minor. Her statement was recorded before the trial Court in April, 2015. Charge has been framed under Section 376(G) IPC. The offence is not compoundable, therefore, the question of any compromise does not arise. The trial Court has to examine the evidence and decide the case on the merits. The accused could not seek the summoning of the prosecution witnesses all over again appear as a defence witness. A novel way has been found to delay the proceedings. The application has been filed to circumvent the process of law and defeat the ends of justice. A petition bearing No. CRM-M-2605-2016 for quashing of FIR on the basis of compromise was listed for hearing for the first time in January, 2016. Notice has not been issued yet. The petitioners are only seeking adjournments.

There is no illegality in the order. This revision is dismissed

with costs of Rs.10,000/- to be deposited with District Legal Services Authority, Panchkula within 15 days.

20.10.2016

Sunil

(ANITA CHAUDHRY)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No