

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

CRM-M No. 13187 of 2017(O&M)

Date of decision: 3.5.2017

Harbans Singh Sodhi

....Petitioner

VERSUS

Balwinder Kaur and others

.....Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. K.S. Bassi, Advocate for the petitioner.

REKHA MITTAL, J.

The present petition directs challenge against orders dated 08.04.2016 passed by the Judicial Magistrate Ist Class, Samana (Annexure P-2) and dated 10.01.2017 by the Additional Sessions Judge, Patiala whereby application filed by the prosecution for recalling the complainant for her re-examination to depose about identity of the accused has been allowed by the trial Court and the order passed by the trial Court has been affirmed in revision by the Additional Sessions Judge, Patiala.

Counsel for the petitioner has submitted that Section 138 of the Indian Evidence Act, 1872 (in short 'the Act') provides for order of examinations and it says that witnesses shall be first examined-in-chief, then (if the adverse party so desires) cross-examined, then (if the party calling him so desires) re-examined. The re-examination shall be directed to the explanation of matters referred to in cross-examination.

Much stress has been laid by counsel for the petitioner that as examination-in-chief of the complainant was completed and his cross-examination was deferred, application for re-examination of the complainant can be entertained by the Court only after her cross-examination is completed. It is strenuously argued that before the

complainant was cross-examined by the accused, there was no occasion for the trial Court to allow the complainant to be re-examined, therefore, orders passed by the Courts below cannot be sustained and liable to be set aside. For this purpose, he has referred to judgment of Hon'ble the Supreme Court of India **Rajaram Prasad Yadav Vs. State of Bihar and another, 2013(3) RCR (Criminal) 726** that also finds reference in the order passed by the revisional Court.

I have heard counsel for the petitioner, perused the paper-book particularly the orders impugned.

The petitioner along with his co-accused is facing trial in a private complaint under Sections 323, 324, 325, 354, 506 read with Section 34 of the Indian Penal Code, 1860 pending in the Court of Judicial Magistrate Ist Class, Samana. After the pre-process stage was completed and the accused summoned by the trial Court caused appearance, the complainant appeared in the witness box and her examination-in- chief was recorded on 20.10.2014 and cross-examination was deferred at the request of counsel for the accused. An application under Section 311 Cr.P.C. was filed by the complainant for her re-examination so as to identify the accused as question with regard to identification of the accused could not be put to the complainant due to over-sight. After seeking reply and having heard counsel for the parties, the trial Court by taking into consideration the provisions of Section 311 Cr.P.C. and judgment of this Court **Balwinder Singh Vs. State of Punjab and others, 2010 (1) RCR (Criminal) 909** has held that since identification of the accused is a significant fact especially in the present circumstances, it would cause a serious prejudice to the complainant in case she is not given an opportunity

to identify the accused. Further held that in case the application is allowed, defence counsel would get an opportunity to cross-examine the witness on point of identification. As has been noticed hereinbefore, the revisional Court affirmed the order passed by the trial Court by holding that the judgment in Rajaram Prasad Yadav's case (supra) is not applicable to the facts of the case at hand as in the said authority, cross examination has already been completed.

There is no dispute about the scheme provided for 'order of examination' of witnesses under Section 138 of the Act according to which firstly examination-in-chief shall be recorded, then cross-examination if the adverse party so desires and then re-examination if the party calling the witness so desires and the circumstances under which a witness can be allowed to be re-examined have also been enshrined in Section 138 of the Act. Though in the application under Section 311 Cr.P.C, it appears that the word used by the complainant is for 're-examination' of the complainant but as a matter of fact, the application was for further examination of the complainant before her cross examination could be initiated by defence counsel. Under the circumstances, contention of counsel for the petitioner that re-examination could be allowed only after cross-examination is mis-conceived and merits rejection.

Section 311 Cr.P.C. provides for summoning any person as a witness or examining any person in attendance (without summoning as a witness) or recall or re-examine any person already examined at any stage of any inquiry, trial or other proceeding. Second part of Section 311 Cr.P.C. mandates that the Court shall summon and examine or recall and

re-examine any such person if his evidence appears to it to be essential to the just decision of the case.

In the case at hand, the trial Court has exercised its discretion to conduct further examination-in-chief of the complainant in regard to the aspect of identity of the accused which is held to be essential for just decision of the case. As per the settled position in law, technicalities of procedure cannot be allowed to stand in the way of substantial justice. Counsel for the petitioner has failed to make any submission as to what prejudice would be caused to the petitioner by further examination of the complainant even before her cross examination was initiated at the instance of the accused. He has not even assailed findings of the trial Court that identification of the accused at the behest of complainant is an important aspect for just decision of the case. Under the circumstances, the petitioner cannot derive any advantage to his contention from the referred authority wherein the question was with regard to re-examination of a witness after his cross examination was completed and the trial Court had dismissed the application under Section 311 Cr.P.C.

For the foregoing reasons, finding no merit, the petition fails and is accordingly dismissed in *limine*. Nothing stated hereinbefore shall cause prejudice to either of the parties during trial.

MAY 3, 2017

‘D. Gulati’

(REKHA MITTAL)

JUDGE

Whether speaking/reasoned :

yes/no

Whether reportable :

yes/no