

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

Crl. Misc. M 25583 of 2017 (O&M)
Date of decision: 20.7.2017

Kuldeep Singh @ Kala

...Petitioner

Versus

State of Punjab

...Respondent

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present: Mr. Sandeep Verma, Advocate
for the petitioner.

JAISHREE THAKUR, J.

1. Aggrieved against the dismissal of application filed under section 311 Code of Criminal Procedure (for short '**the Code**') for recalling the complainant, the instant Criminal Miscellaneous Petition has been filed.

2. The petitioner herein was accused in FIR No. 127 dated 16.07.2016 under Sections 376/323 IPC registered at Police Station Patra District Patiala. An application under Section 311 of the Code for recalling PW complainant for further cross-examination was preferred. The complainant, at whose instance FIR No. 127 dated 16.07.2016 was registered against Kuldeep Singh under Sections 323/376 IPC was examined on 17.04.2017, and was subjected to cross-examination on the same day. Thereafter, on 1.5. 2017 the statement of Ajaib Singh son of Amrik Singh was recorded, and he was also cross examined on 01.05.2017 itself. After the cross-examination was completed by Sh. Bhalinder Singh Sodhi, an application under section 311 of the Code was filed on 15.05.2017 by

another counsel, namely Sat Pal Singla, Advocate to recall the complainant on the ground that contradictory statements have been made by the complainant and the witness and, therefore, it became necessary to further cross examine the complainant. The Ld. Additional Sessions Judge, Patiala, dismissed the application on the ground that mere change in counsel would not be a ground for allowing the application.

3. Learned counsel for the petitioner urges that it is imperative to recall the witness for cross-examination since the witness had not supported the version as set up by the complainant and she needed to be confronted with such a statement.

4. I have heard the counsel for the petitioner and also produced the pleadings.

5. Admittedly, the complainant was subjected to cross-examination by the counsel for the accused/petitioner. The only ground that has been set out for recalling the complainant for further cross-examination is on account of the fact that after recording of the evidence, there was a change in counsel, who noticed that there was a discrepancy between the statement of the complainant and that of the witness.

6. It is true, that Section 311 of the Code permits a person to be summoned as a witness at any stage of the trial or other proceedings. The Court is also competent to exercise to such powers suo motu even if no such application has been filed. However, there is rider that Court must satisfy itself that it was in fact essential to examine such witness to be recalled for further examination. In *State of Haryana Vs Ram Mehar and Others, 2016*

(4) R.C.R (Criminal) 154, it has been held that mere change of counsel

would not bring the applicants/accused case within the purview of Section 311 Cr.PC. In the instant case, the counsel for the accused/petitioner herein had ample opportunity to cross-examine the complainant, which opportunity was availed of. It is thereafter, on account of change of counsel, who noted that one of the witnesses had turned hostile, that the instant application has been moved. The statement of the witness can be referred to at the time of argument and there would be no necessity at the present moment to allow the application to recall the witness to put such a question. No adequate ground has been set out in the application to warrant any interference by this court.

7. Finding no infirmity in the order passed, this petition is dismissed being without merit.

20.7.2017

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(JAISHREE THAKUR)
JUDGE

Whether speaking/reasoned

Yes

Whether reportable

No