

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

CRM No.M-26185 of 2017 (O&M)

Date of Decision: July 21, 2017

Jasbir Singh

...Petitioner

VERSUS

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Ashwani Talwar, Advocate
for the petitioner.

INDERJIT SINGH, J.

Petitioner has filed this petition under Section 482 Cr.P.C. read with Section 311 Cr.P.C. for setting aside the order dated 04.03.2017 passed by learned Addl. Sessions Judge, Yamuna Nagar at Jagadhri, dismissing the application filed by the petitioner under Section 311 Cr.P.C.

I have heard learned counsel for the petitioner and have gone through the record.

From the record, I find that during the pendency of the trial, an application was filed by accused Jasbir Singh and Kamal Kumar under Section 311 Cr.P.C. In the application, it is prayed for recalling prosecution witnesses namely PW-6 Gaurav and PW-7 Pardeep. It is stated in the application that after the incident, a Panchayat was convened and a writing was made in that panchayat wherein affidavits were also furnished. In that

Panchayat, it was stated by these two witnesses that they are ignorant about

the identity of the assailants. Both these witnesses could not be cross-examined on this aspect due to over-sight and inadvertence of earlier counsel. It was prayed that in the circumstances mentioned above, the application be allowed and both these witnesses be recalled.

Learned Addl. Sessions Judge, Yamuna Nagar at Jagadhri, vide impugned order dated 04.03.2017 dismissed the application by holding that complainant Gaurav PW-6 has been cross-examined at length running into eight pages. He was also asked about the fact if he had informed about the incident to the village Panchayat or not. PW-7 Pardeep was also cross-examined at length and his cross-examination is running into six pages. The Court further held that witnesses are now sought to be recalled on the basis of a photocopy of a compromise/panchayat writing. No authenticity can be placed on the photocopy of the document upon which the witnesses sought be recalled. The witnesses have been cross-examined at length earlier on the aspect that they were unable to identify the assailants.

The Court below has rightly held that in such a heinous crime, witnesses should not be recalled at the request of the accused. The perusal of the record shows that firstly witnesses have been cross-examined in detail. It has been specifically asked to the complainant whether he informed the Gram Panchayat or not. Similarly, on identity also, the witnesses have been cross-examined. These facts were in the knowledge of the accused at that time. Mere changing of counsel is no ground to recall the witnesses. As discussed by the Court below, the witnesses have been cross-examined in detail. It is a murder case. The witnesses cannot be recalled on such pleas under Section 311 Cr.P.C.

why the Resolution has not been passed by the Gram Panchayat. Moreover, the accused are at liberty to prove their defence evidence and the Court will look into the defence evidence at the time of final disposal of the case. The purpose of filing of this application looks that witnesses may have been pressurized or the matter was compromised later on, so that the witnesses may give statements in favour of the accused at this stage. This is not the purpose of the provisions under Section 311 Cr.P.C.

In view of the above discussion, I find that the impugned order dated 04.02.2017 passed by learned Addl. Sessions Judge, Yamuna Nagar at Jagadhri, is correct, as per law. In no way, it can be held that passing of impugned order amounts to miscarriage of justice.

Therefore, finding no merit in the present petition, the same is dismissed.

July 21, 2017
Vgulati

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No