

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

CRL. MISC. No.M-27028 OF 2014 (O&M)
DATE OF DECISION : 28th MARCH, 2017

K. C. Padhi

.... Petitioner

Versus

**State through Central Bureau of Investigation (CBI), Sector 30,
Chandigarh.**

.... Respondent

CORAM : HON'BLE MR. JUSTICE A. B. CHAUDHARI

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Present : Mr. Shashi Shanker, Advocate for the petitioner.

Mr. R. K. Handa, Advocate for the respondent.

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A. B. CHAUDHARI, J. (ORAL)

Heard learned counsel for the petitioner and learned counsel
for the CBI.

In the present petition there is challenge to the order declining to recall the prosecutrix PW-1 in a pending Sessions Trial bearing case No.62 of 16.09.2006 in FIR No. RC.I(S) 2006 SCR-III New Delhi dated 10.05.2006 under Section 376 IPC and 5 of Immoral Traffic (Prevention) Act.

Admittedly, the prosecutrix PW-1 was examined and cross-examined in the year 2006-2007. Learned counsel for the petitioner submits that the chargesheet served on the petitioner-accused by the prosecution agency was a coded chargesheet. By virtue of order passed by this Court the coded chargesheet was supplied to the petitioner on 17.08.2007. The counsel for the petitioner then contended that parents of the prosecutrix were shown in the list of the witnesses by the CBI and

were also summoned as witness for deposing before the trial Court. But the CBI dropped these witnesses and thus did not examine them.

According to learned counsel for the petitioner the petitioner was under an expectation to bring the exact age and date of birth of the prosecutrix PW-1 from her parents. But since they were dropped, the necessity to apply for recall PW-1 arose and that is why the application in question for recalling PW-1 was made though in the year 2012 and has been rejected by the impugned order dated 21.03.2007.

Upon hearing learned counsel for the petitioner and learned counsel for the CBI, at the outset, I find that prosecutrix PW-1 was examined and cross-examined in the year 2006-2007. Nothing prevented the petitioner assuming it to be so to cross-examine her on her date of birth at that time only. Even otherwise the decoded chargesheet was served on the petitioner on 17.08.2007 while the application in question for recalling PW-1 prosecutrix was made in the year 2012 i.e. after almost five years for which there is no explanation anywhere. To say that the petitioner was awaiting for the parents of the prosecutrix for bringing out the said fact, does not appear to be bonafide reason. It was the choice of the prosecution to examine or drop the witnesses. This Court cannot ignore the fact that the application for recalling was made after five years, the same was decided after two years of its date of filing and now it is over a decade that the petitioner wants recall of the prosecutrix PW-1 for cross-examination. This Court does not want to put the prosecutrix PW-1 in embarrassment. At any rate there is every likelihood of accused persons influencing her due to the period that has

passed. Any interdiction with the trial in such a manner would certainly be destructive of the fair trial for the prosecutrix as well as the prosecution.

In view of the above, I find that the CBI Court was right in dismissing the application filed by the petitioner for recalling the prosecutrix PW-1. In the result, I find no merit in the present petition the same is thus dismissed.

28th March, 2017
‘raj’

(A. B. CHAUDHARI)
JUDGE