

CRM-M-32615 of 2016(O&M)

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In the High Court of Punjab and Haryana at Chandigarh

CRM-M-32615 of 2016(O&M)

Date of Decision:15.2.2017

Amandeep Singh @ Happy

---Petitioner

vs.

State of UT Chandigarh

---Respondent

Coram: Hon'ble Mrs. Justice Rekha Mittal

Present: Mr. Amandeep Rana, Advocate
for the petitioner
Mr. D.S.Brar, Addl. P.P.
for UT Chandigarh

Rekha Mittal, J.

The present petition directs challenge against order dated 11.7.2016 (Annexure P-4) passed by the Additional Sessions Judge, Chandigarh whereby application filed by the petitioner (accused) for recalling the prosecutrix for cross examination has been dismissed.

Counsel for the petitioner would submit that examination in chief of the prosecutrix was recorded on 2.6.2016 and on the very same day cross examination was treated as nil. It is further submitted that a serious

prejudice is likely to be caused to the petitioner to defend a serious charge under Section 376 of the Indian Penal Code (in short “IPC”) in case, he is not permitted to cross examine the alleged victim. It is prayed that the petitioner may be allowed one opportunity to cross examine the prosecutrix.

Counsel representing UT Chandigarh, on the contrary, has submitted that defence counsel representing the petitioner before the trial court made a statement that cross examination be treated as nil and for that reason the petitioner cannot be heard to say that either he was denied an opportunity to cross examine the prosecutrix or he can assert his claim for calling the prosecutrix, a child for her cross examination.

I have heard counsel for the parties, perused order dated 2.6.2016 as well as the impugned order.

The prosecutrix was examined in chief on 2.6.2016, the day her cross examination was treated as nil on the alleged statement made by defence counsel who was directed to cross examine the witness after he had sought an adjournment that he needed time to go through the file. It appears that as the defence counsel had not prepared the case for cross examination of the material witnesses and his request for deferring cross

examination was not acceded to by the Court, he without appreciating serious consequences likely to ensue for the petitioner made a statement that cross examination be treated as nil.

Taking into consideration the settled principle in law that the accused must get a fair opportunity to defend himself coupled with serious prejudice likely to be caused for failure of the petitioner to cross examine the prosecutrix, star witness in the case, the petitioner is provided with one effective opportunity to cross examine the prosecutrix.

For the foregoing reasons, the petition is allowed in the aforesaid terms. It is clarified that the petitioner shall ensure that cross examination of the prosecutrix is completed on the date she appears in the Court for the said purpose.

(Rekha Mittal)
Judge

15.2.2017
paramjit

Whether speaking/reasoned: Yes/No
Whether reportable : Yes/No