

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

Criminal Misc. No.M- 46403 of 2016(O&M)

Date of Decision: January 9 , 2017.

Ravi Kumar PETITIONER (s)

Versus

State of Punjab RESPONDENT (s)

CORAM:- HON'BLE MRS.JUSTICE LISA GILL

Present: Mr. Sunil Agnihotri, Advocate
for the petitioner.

LISA GILL, J.

This petition has been filed for quashing of the order dated 04.11.2016 whereby the trial court has dismissed the petitioner's application for recalling of the prosecutrix (PW2). The prosecutrix (PW2) was examined on 06.05.2016 and thereafter cross-examined by the defence counsel on 12.05.2016. The prosecution evidence was closed on 26.09.2016. Thereafter, three witnesses in defence have been examined by the accused petitioner.

An application under Section 311 Cr.P.C. was then filed on behalf of the accused petitioner for recalling of the prosecutrix (PW2) for recross-examination on the ground that certain facts could not be put to her. It is mentioned in the application that the petitioner was being defended by the legal-aid counsel. The petitioner's parents had passed away and the maternal aunt of the petitioner met the counsel in August, 2016 itself. On inquiry, she

came to know about certain facts of the case, which were then conveyed to the counsel for the petitioner-accused. Defence witnesses were accordingly examined. The version put forth by the three witnesses in defence is required to be put to the prosecutrix (PW2).

This application has been dismissed by the learned Additional Sessions Judge, Hoshiarpur vide impugned order dated 04.11.2016 while observing that sufficient opportunity had been afforded to the defence to examine all prosecution witnesses. The application has been filed merely with a view to delay the proceedings.

Learned counsel for the petitioner vehemently argued that no occurrence as alleged in the FIR actually took place. This is borne out by the witnesses examined in defence. It is thus necessary to put all these facts to the prosecutrix (PW2). Therefore, the application for recalling of the prosecutrix be allowed.

Having heard learned counsel for the petitioner and going through the file, I find no ground to interfere. The defence available to the petitioner was necessarily in his knowledge. Section 311 Cr.P.C. reads as under:-

311. Power to summon material witness, or examine person present. – Any Court may, at any stage of any inquiry, trial or other proceeding under this Code, summon any person as a witness, or examine any person in attendance, though not summoned as a witness, or recall and re-examine any person already examined; and 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.

There is no dispute that the right of cross-examination arises not

under Section 311 Cr.P.C. but under the Evidence Act which gives a party the right to cross-examine a witness who is not his own witness. Learned counsel for the petitioner is unable to point out any ground whatsoever to establish that the learned trial court has wrongly exercised its discretion. There is indeed no question of recalling the prosecutrix (PW2) to confront her with the version given by the defence witnesses. The impugned order dated 04.11.2016 has been correctly passed.

Accordingly, this petition is dismissed.

January 9 , 2017.
'om'

(LISA GILL)
JUDGE

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