

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

CRR-2584-2016

Date of decision: 20.02.2017

Sony

...Petitioner

Versus

State of Punjab and another

...Respondents

CORAM:HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Amarjit Singh Sandhu, Advocate,
for the petitioner.

Ms. Manpreet Dhaliwal, AAG, Punjab.

Ritu Bahri, J.

This petition has been filed against the order dated 27.05.2016 (Annexure P-1) passed by the Additional Sessions Judge, Patiala, whereby application filed by the petitioner under Section 311 Cr.P.C. for recalling of PW-1 has been dismissed.

A perusal of zimni order dated 15.01.2016 shows that the prosecutrix along with two other witnesses was present in Court on that date, but counsel for the accused-petitioner had not appeared. Accordingly, a Legal Aid counsel was ordered to be provided to the accused. Thereafter, Mr. Preetinder Sharma, Legal Aid Counsel appeared and filed power of attorney on behalf of accused-petitioner. He was asked to cross-examine witness Parminder Kaur, whose examination-in-chief had been recorded on 14.12.2015 and 13.01.2016. Upon this, Mr. Preetinder Sharma, Legal Aid Counsel sought some more time to go through the file. Thereafter, the file was again taken up at 3.00 P.M., but Mr. Preetinder Sharma did not put in

appearance despite the case being called again and again. At the same time,

Mr. Lachman Gir, Advocate, appeared and filed power of attorney on behalf of the accused. He also sought time to cross-examine the prosecutrix. Due to this reason, the evidence of the prosecutrix was treated as 'NIL' and no further time was granted to the defence counsel to cross-examine the said witness.

Keeping in view that Mr. Preetinder Sharma, Legal Aid Counsel, did not cross-examine PW Parminder Kaur on 15.01.2016 and the petitioner had engaged another counsel namely Mr. Lachman Gir on the same very date, the cross-examination of PW Parminder Kaur should not have been treated as 'NIL' on 15.01.2016 itself. Powers under Section 311 Cr.P.C. can be exercised at any time for recalling of a witness, who appears to be essential for the just decision of the case. This, in the present case, has not been done. Moreover, the prosecutrix could not be cross-examined due to the irresponsible behaviour of counsel for the petitioner. There was no fault on the part of the accused-petitioner. In these circumstances, one more opportunity should be granted to accused-petitioner to cross-examine the prosecutrix.

Resultantly, the impugned order dated 27.05.2016 (Annexure P-1) is set aside and one effective opportunity is granted to the petitioner to cross-examine PW-1 Parminder Kaur before the trial Court.

Allowed accordingly.

20.02.2017
ajp

(RITU BAHRI)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No