

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

CRR No. 243 of 2017(O&M)

Date of decision :10.08.2017

Manjeet @ Kalia

..... Petitioner

Versus

State of Haryana

.....Respondent

CORAM : HON'BLE MRS. JUSTICE LISA GILL

Present: Mr.Sunny Bhardwaj, Advocate
for the petitioners.

LISA GILL, J. (Oral)

The petitioner is aggrieved of the order dated 03.01.2017 passed by learned Sessions Judge, Bhiwani, whereby his application under Section 311 Cr.P.C for recalling the prosecutrix (PW-1) for further cross-examination has been dismissed.

The petitioner along with another are facing trial for the offences punishable under Sections 363, 366-A, 376-D, 34 IPC and Section 6 of the Protection of Children From Sexual Offences Act, 2012. The prosecutrix/victim testified before the learned trial Court. She was cross-examined by the defence. Some of the other material witnesses were examined as well. Thereafter, an application under Section 311 IPC was

filed by the accused for re-calling the prosecution for further cross-examination on the ground that when his counsel came to visit him in the jail, certain material facts were revealed to him. As these facts were earlier not in the knowledge of the counsel, the prosecutrix could not be cross-examined on the said aspects.

Learned counsel for the petitioner submits that the real sister of the victim and the complainant i.e. father of the victim (who have testified subsequently) have not supported the prosecution version. They have denied the incident in question. In this situation, the prosecutrix should be recalled to be confronted on this aspect. Therefore, the impugned order should be set aside and the prosecutrix (PW-1) should be recalled for further cross-examination.

I have heard the learned counsel for the petitioner and have gone through the file with his able assistance.

The certified copy of the cross-examination to which the prosecutrix was subjected, produced before this Court today, is taken on record subject to all just exceptions.

Perusal of the same reveals that she was subjected to lengthy cross-examination by the defence. Merely because some of the witnesses have subsequently not supported the prosecution version, cannot be a ground for recalling of the prosecutrix (PW-1). Learned counsel is unable to point out “the material facts” which were brought to the notice of the counsel at a later stage which would justify the recall of the prosecutrix. It has been held by the Hon'ble Apex Court in **Rama Paswan and others Vs. State of Jharkhand, 2007 (2) R.C.R.(Criminal) 717**, that the object

underlying Section 311 Cr.P.C is that there may not be a failure of justice on account of mistake of either party in bringing valuable evidence on record or leaving of ambiguity in the statements of the witnesses examined from either side.

Learned counsel for the petitioner is unable to point out any illegality or infirmity in the impugned order dated 03.01.2017, passed by learned Sessions Judge, Bhiwani, which calls for interference by this Court in exercise of revisional jurisdiction.

Needless to say none of the observations made here-in-above shall be construed to be a reflection on merits of the case and shall have no bearing on the trial.

Consequently, finding no merit, this petition is dismissed.

10.08.2017

s.khan

(LISA GILL)
JUDGE

Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No