

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

Criminal Revision No.258 of 2017(O&M)

Date of Decision: January 27 , 2017.

Gaurav Luthra

..... PETITIONER (s)

Versus

State of Haryana

..... RESPONDENT (s)

CORAM:- HON'BLE MRS.JUSTICE LISA GILL

Present: Mr. R.S.Mamli, Advocate
for the petitioner.

1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the reporters or not?
3. Whether the judgment should be reported in the digest?

LISA GILL, J.

Prayer in this petition is for setting aside the impugned order dated 05.12.2016 whereby the learned Additional Sessions Judge, Fatehabad has dismissed the application under Section 311 Cr.P.C. moved by the accused to recall the prosecutrix (PW1) and PW2 Sunil Kumar.

It is mentioned in the application that at the time of cross-examination of these witnesses, some material and important questions qua the identification of the accused, time, date and place of incident, physical features of the accused etc. were left out. The said questions were not put to the witnesses at the relevant time. As such it is necessary to further cross-examine the above-mentioned witnesses in the interest of justice. This application has

been dismissed by the learned Additional Sessions Judge, Fatehabad while mentioning that both the abovesaid witnesses have been cross-examined at length and recalling of these witnesses for further cross-examination cannot be allowed to fill up the lacuna.

I have heard learned counsel for the petitioner.

It is vehemently argued that no prejudice shall be caused to anyone in case the said witnesses are recalled and cross-examined. Vital questions in respect to the identity of the accused as well as the time and place of incident could somehow not be put to the said witnesses. The same are necessary for the just adjudication of the case, therefore, both the abovesaid witnesses should be recalled and the petitioner's application under Section 311 Cr.P.C. should be allowed.

Learned counsel for the petitioner is however unable to point out any ground whatsoever which would justify the recalling of said witnesses under Section 311 Cr.P.C. It is not denied that proper opportunity to cross-examine the said witnesses was afforded to the defence. Questions regarding identification of the accused, time, date and place of incident, physical features of the accused etc. could easily have been put to the said witnesses. It is rightly observed by the learned trial court that the defence cannot be allowed to fill up the lacuna at a later stage by filing an application under Section 311 Cr.P.C. for reexamination of the witnesses.

In view of the aforementioned facts, it cannot be said that any illegality or material irregularity has been committed by the learned trial court in passing the impugned order dated 05.12.2016 which warrants interference by this Court in its revisional jurisdiction.

Consequently, this petition is dismissed being devoid of merit.

None of the observations made hereinabove shall be construed to be a reflection on the merits of the case and shall have no bearing on the trial.

January 27 , 2017.
'om'

(LISA GILL)
JUDGE

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