

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

**CRR No. 4018 of 2017(O&M)
Date of Decision: 02.11.2017**

Nitil Goyal

..... Petitioner

Versus

State of Haryana and another

..... Respondents

CORAM:- HON'BLE MRS.JUSTICE LISA GILL

Present: Ms. Shimpy Raman Sharma, Advocate
for the petitioner.

LISA GILL, J(Oral).

Petitioner prays for setting aside of order dated 27.09.2017, passed by the learned Sessions Judge, Faridabad, whereby the petitioner's application under Section 311 of the Code of Criminal Procedure, 1973 (for short Cr.P.C.) for recalling PW-1 (prosecutrix/complainant) has been dismissed.

Brief facts of the case are that FIR No. 16 dated 13.02.2016, under Sections 498-A, 323, 376, 354, 506 IPC, Police Station Sector-16, Faridabad, was registered at the instance of the complainant against the petitioner and others. The complainant testified before the learned trial Court on 17.08.2016. Her cross-examination was deferred and an application 319 Cr.P.C., for summoning additional accused was moved. The said application under Section 319 Cr.P.C., was dismissed on 22.08.2016. Cross-examination of the complainant (prosecutrix) was conducted on 29.09.2016. Prosecution evidence was closed. Evidence in defence was led. Thereafter, application under Section 311 Cr.P.C. (Annexure P-1) was moved for recalling of the

witness-PW-1 (prosecutrix/complainant) on the ground that certain material facts which were required to be put to the said witness have been left out in the cross-examination. It is mentioned that the accused was in judicial custody when the cross-examination of the complainant/prosecutrix was conducted. He was mentally disturbed, therefore not able to brief his counsel properly. Therefore, it was prayed that the said application be allowed.

The learned trial Court after considering the facts and circumstances of the case dismissed the said application vide impugned order dated 27.09.2017 specifically observing that due and proper opportunity was afforded for cross-examination of the prosecutrix/complainant. It was further observed that it is not forthcoming as to what are the material facts left out during cross-examination.

Aggrieved therefrom, the present petition has been filed.

Learned counsel for the petitioner submits that there are certain aspects mentioned by the said witness in her examination in chief which she has not been confronted with. The petitioner being in judicial custody was in an extremely disturbed state of mind, therefore, he could not confer with his counsel in a proper manner. The application under Section 311 Cr.P.C., has been filed by another counsel engaged by the petitioner. Great prejudice and injustice shall be caused to the petitioner in case an opportunity to cross-examine the prosecutrix/complainant yet again is not allowed.

I have heard learned counsel for the petitioner and have gone through the file as well as copy of the deposition of PW-1 (prosecutrix/complainant), produced in Court today. The same is taken on record subject to just exceptions.

It is not in dispute that statement of PW-1 (prosecutrix/complainant) was recorded on 17.08.2016. Her cross-examination was

thereafter completed on 29.09.2016. Prosecution evidence was duly closed on 16.05.2017. The petitioner examined himself in defence. Subsequently, the present application under Section 311 Cr.P.C., through another counsel was moved. It is not in dispute that the said application was moved after lapse of more than one year of the completion of cross-examination of the said witness. Learned counsel for the petitioner informs that the petitioner was released from custody in October, 2016.

A perusal of the statement of PW-1 (prosecutrix/complainant), reveals that she has been subjected to detailed cross-examination. Contention of learned counsel for the petitioner that she was not confronted in respect to allegations attracting Section 377 IPC is not correct as specific suggestions were given to her and she has been confronted with her statement Ex.PA, in this regard.

Learned counsel for the petitioner is unable to point out any illegality, infirmity or perversity in the impugned order dated 27.09.2017, passed by the learned Sessions Judge, Faridabad, which calls for interference by this Court in exercise of revisional jurisdiction.

Accordingly, this petition is dismissed.

02.11.2017
s.khan

[LISA GILL]
Judge

Whether speaking/reasoned : Yes/No

Whether reportable: Yes/No