

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

CRM-M-2729-2018

Date of decision:-23.1.2018

Yogesh @ Ghanu

...Petitioner

Versus

State of Haryana

...Respondent

CORAM : HON'BLE MR. JUSTICE H.S. MADAAN

Present : Mr.A.P.S. Mann, Advocate
for the petitioner.

H.S. MADAAN, J.

This petition under Section 482 Cr.P.C. challenging the order dated 15.12.2017 passed by learned Sessions Judge, Jhajjar vide which he had dismissed an application preferred by petitioner/accused under Section 311 Cr.P.C. for recalling of PW1 Jai Karan to face further cross-examination has been moved by petitioner – Yogesh @ Ghanu.

Briefly stated, facts of the case are that petitioner - Yogesh, an accused in FIR No.177 dated 16.4.2016 for the offences under Sections 302, 323, 201 IPC, registered at Police Station Sadar, Bahadurgarh has been facing trial in the Court of learned Sessions Judge, Jhajjar. During the course of trial, he had moved an application under Section 311 Cr.P.C. for recalling PW1 – Jai Karan for further cross examination on the assertions that statement of such witness was

recorded on 22.8.2016 and at that time Dr.Sanjeev Kukkal, who had medico-legally examined injured Jai Karan was not cited as a witness for the prosecution; that subsequently on an application under Section 311 Cr.P.C. having been filed by the prosecution, which was allowed on 21.9.2017, statement of Dr.Sanjeev Kukkal was recorded as PW16; that thereafter further cross-examination of PW1 Jai Karan has become very essential for the just decision of the case since material questions are to be put to him regarding his injuries.

The application was contested by the Public Prosecutor for the State by filing reply. The stand taken by the prosecution is that Jai Karan was happened to be one of the important witnesses for the prosecution and now the accused wants to examine him again to get the prosecution case disturbed so as to get him declared hostile. Whereas the case as put forward by counsel for the petitioner was as per assertions in the application.

After hearing the arguments of both sides, learned trial Court dismissed the application making following observations:

Learned counsel for the accused/applicant has not explained which questions regarding injury he has missed while cross-examining the aforesaid witness at the time of his cross-examination and it is well settled proposition of law that a witness should not be allowed to re-examine as there is every possibility that he may not support the prosecution version and usually, he would support the accused. To support this view, reliance can be placed on file the case titled **“Ratan Lal Vs. Prahlad Jat, 2017(4)**

R.C.R.(CrL) 410 wherein the Hon'ble Supreme Court has held that *“the object of the provision of Section 311 Cr.P.C. is to do justice not only from the point of view of accused and the prosecution but also from the point of view of an orderly society. This power has to be exercised only for strong and valid reasons with caution, not as a matter of course. It was obvious that they had been won over. Such application cannot be allowed.”* In the present case, no ground is made out to recall PW1 Jai Karan as he was cross-examined at length by learned counsel for the accused. In these circumstances, the present application moved by the accused/applicant Yogesh @ Dhamu is hereby dismissed being devoid of merits.

Feeling aggrieved by the said order, the petitioner/accused has approached this Court by way of filing the present petition.

I have heard learned counsel for the petitioner besides going through the record and I do not find any illegality or infirmity in the impugned order passed by the learned trial Court, which might have called for interference by this Court while exercising jurisdiction under Section 482 Cr.P.C. Rather it is based upon proper appraisal and appreciation of evidence and correct interpretation of law.

The petition being without merit stands dismissed accordingly.

(H.S.MADAAN)
JUDGE

23.1.2018

Brij

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No