

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

CRM-M-31709-2016

Date of decision:-23.8.2018

Kirti

...Petitioner

Versus

State of Haryana and another

...Respondents

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

Present : Mr.Ram Bilas Gupta, Advocate
for the petitioner.

Mr.Neeraj Poswal, AAG, Haryana.

Ms.Parveen, Advocate
for respondent No.2.

H.S. MADAAN, J.

By way of filing the present petition, the petitioner/complainant Kirti has challenged the order dated 16.8.2016 passed by Additional Sessions Judge, Faridabad vide which an application for recalling of prosecutrix had been dismissed.

Briefly stated, facts of the case are that prosecutrix while getting her statement recorded with the police in presence of legal aid counsel levelled allegations that accused Jai Parkash had committed rape upon her. Her statement was recorded under Section 164 Cr.P.C. by a Judicial Magistrate on 17.8.2015, wherein she reiterated her stand that accused had committed rape upon her and bitten the private parts of her

minor daughter aged about 2 ½ years. However, when her statement was recorded in the Court, she did not support the prosecution story. Subsequently, she moved an application under Section 311 Cr.P.C. that she was threatened by *GUNDA* elements and out of fear and threats, she had made statement not supporting the prosecution story and she be permitted to get her statement recorded again to narrate the factual position and her testimony is necessary for just decision of the case.

This contention was opposed by the defence vehemently.

The trial Court dismissed the application vide order dated 16.8.2016 for the reason that when statement of prosecutrix was recorded, her counsel was also present in the Court. The statement was recorded in camera proceedings and it could not be expected that she was under threat or pressure and further the application in question has been filed after three months of getting her statement recorded and that she had not reported the matter of *GUNDA* elements giving alleged threat to the police. Therefore, the application was dismissed.

Feeling aggrieved, the complainant has approached this Court by way of filing the present petition, notice of which was given to respondents i.e. State of Haryana and accused Jai Parkash, who put in appearance through counsel.

I have heard learned counsel for the petitioner, learned State counsel for respondent No.1 and learned counsel for the accused besides going through the record.

Here we are dealing with a case where a young woman was subjected to rape and her minor daughter given bites on the private parts. Such type of allegations need to be taken with all the seriousness and

sensitivity. The very fact that the prosecutrix had informed the police and got her statement recorded before Judicial Magistrate under Section 164 Cr.P.C. naming Jai Parkash as a culprit and the very fact that on completion of investigation Jai Parkash had been sent up to face trial goes to show that the version, given by the prosecutrix to the police in which after investigation, was found to have merit, cannot be discarded outrightly. The complainant though had not supported the prosecution story when her statement was recorded during the trial but she has given a plausible explanation that she was in fear due to threats given by some *GUNDA* elements and now she has come out of that fear and is prepare to give the factual position. In my considered view, she should be given a chance to get her statement recorded with respect to the incident in question by way of re-examination. The accused would get an opportunity to cross-examine the prosecutrix and confront with her previous statements. The trial Court would then decide as to how much weightage and importance is to be given to the said deposition of prosecutrix keeping in view the fact that when examined originally as a prosecution witness, she had not supported the prosecution story. However, declining her request would be wrong and improper.

Learned counsel for the petitioner/complainant has referred to authority *Fatehsinh Mohansinh Chauhan & Others Versus Union Territory of Dadra and Nagar Haveli, Silvassa & another, 2003(4) R.C.R.(Criminal) 168*. As per the facts of the said authority prosecution witnesses had turned hostile due to threat given by the accused. On an affidavit having been filed to speak the truth, they were recalled observing that no prejudice will be caused to the accused as he will have

the opportunity of cross cross-examination. This authority finds application to the present case.

Therefore, I find merit in the petition. The same is accepted. The impugned order is set aside and the trial Court is directed to recall the prosecutrix for the purpose of her re-examination, of course giving an opportunity to the accused to cross-examine her.

23.8.2018

Brij

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No

**(H.S.MADAAN)
JUDGE**