

In the High Court of Punjab and Haryana at Chandigarh

Crl. Misc. No. M-40730 of 2018

Date of Decision: 17.9.2018

Rahul

.....Petitioner

Versus

State of Haryana

.....Respondent

CORAM: HON'BLE MRS. JUSTICE ANITA CHAUDHRY

Present: Mr. Deepak Thapar, Advocate
for the petitioner.

ANITA CHAUDHRY, J

The petitioner is seeking quashing of the order dated 5.9.2018 (Annexure P-7) passed by the Additional Sessions Judge wherein his application seeking recall of the victim for further cross-examination has been denied.

I have heard the counsel for the petitioner at great length.

Counsel for the petitioner contends that the victim on recovery had made a statement under Section 164 Cr.P.C which was in favour of the petitioner and later another statement was got recorded the next day and the second statement was introduced in the statement of the victim. Counsel further contends that the petitioner had laid hands on an affidavit sworn by the victim and that was not put to the prosecutrix therefore, it is necessary to put her first statement recorded under Section 164 Cr.P.C. and confront her with the affidavit sworn on 5.7.2017 for the just decision of the case.

The statement of the prosecutrix had been recorded on 6.7.2018

unable to explain as to in whose possession the affidavit was for at least a year and why it could not be put to the witness. The trial Court has dismissed the application observing that the first statement can be proved by the accused when he leads his defence.

The victim cannot be recalled for further examination if the defence had been unable to put some material to the witness. If the defence has left a lacuna it cannot be allowed to be filled. The petitioner has the right to prove a document at the defence stage.

I find no infirmity in the order passed by the Court below.

The petition is dismissed in *limine*.

(ANITA CHAUDHRY)
JUDGE

September 17, 2018
Gurpreet

Whether speaking/reasoned	:	Yes
Whether reportable	:	No