

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

**Criminal Revision No. 1978 of 2018
Date of decision : 17.07.2018**

Amit

.....Petitioner(s)

Versus

State of Haryana and another

...Respondent(s)

CORAM: HON'BLE MRS. JUSTICE ANITA CHAUDHRY

Present: Mr. Munish Puri, Advocate
for the petitioner.

ANITA CHAUDHRY, J.(ORAL)

The petitioner assails the order passed by the Additional Sessions Judge, Jhajjar who dismissed the application filed by the accused seeking recall of the prosecutrix.

The petitioner is facing a trial under Section 376 IPC. The accused and the prosecutrix were known to each other. The complainant had alleged that they had performed marriage in a temple and photographs were with accused and she was kept in a flat and a child was born out of this wedlock. She had later come to know that the petitioner was already married and had two children.

The prosecutrix was examined on 04.10.2017. An application for her recall was filed on 20.04.2018 and the reason for recall is contained

in para nos.2 & 3 of the application. It was pleaded that the counsel had failed to put some documentary evidence i.e. the photographs which were available with the accused and some fresh material has been discovered and therefore those photographs and documentary evidence was required to be put to the witness. The applicant failed to place on record the material that was proposed to be put to the prosecutrix. The trial Court rejected the application.

I have heard the counsel for the petitioner.

The counsel for the petitioner contends that the counsel representing the petitioner had inadvertently not put some photographs to the victim and there were some additional documentary evidence which was required to be put to her. The counsel was asked as to whether all that material has been appended with the application. The answer to it was that it would have disclosed their defence.

Section 311 Cr.P.C. gives the powers to the Court to allow any witness to be recalled, if it is essential for the just decision of the case. To put it differently, while such a widest power is envisaged with the Court but the power has to be judicially exercised and with extreme care and caution but it does not permit a party to fill up the lacuna.

The complainant in the FIR had referred to some facts and had also disclosed that the photographs were with the accused. The applicant has admitted that the material was available with him before the examination of the victim but for reasons only known to them those were not put to the victim. It was not a mistake. It was a deliberate move. The applicant has not

disclosed what material he wants to put to the victim nor is their any explanation as to why it could not be put to her earlier and why it was kept away from the Court. Applicant is wanting to fill up the lacuna, which is not permissible in law.

The petition is dismissed in limine.

(ANITA CHAUDHRY)
JUDGE

17.07.2018
Sunil

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No