

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

**CRR-3247-2018
Date of Decision: 27.09.2018**

Hans Raj

... Petitioner

Vs.

State of Haryana

... Respondent

CORAM : HON'BLE MR. JUSTICE P.B. BAJANTHRI

Present : Mr. Sushil Kumar Verma, Advocate
for the petitioner.

P.B. BAJANTHRI J. (Oral)

In the instant petition, petitioner has questioned the validity of order dated 11.9.2018 passed by Additional Sessions Judge, Sirsa by which petitioner's application filed under Section 311 Cr.P.C for recalling complainant Anita Rani (PW-7) and Vinod Kumar (PW-5) has been rejected.

2. Learned counsel for the petitioner submitted that application filed under Section 311 Cr.P.C. Has been rejected with the following observations:

“In the present application, it is only mentioned that some material questions were not asked to Pws. There is substance in the submission of Ld. PP that neither question nor nature of question is mentioned in the application. It is also a fact on record that both witnesses were cross-examined at length and all sort of questions were put to them. In these circumstances, no ground is made out to allow said application. Resultantly, applicant in hand is dismissed.”

It was submitted that if the questions which are left out is disclosed in the application, it leads to the witness to plan the answer that would be disadvantage to the petitioner if the proposed questions are disclosed. Thus, Sessions Court has erred in passing order dated 11.9.2018

while rejecting the petitioner's application filed under Section 311 Cr.P.C.

3. Heard learned counsel for the petitioner.

4. Undisputedly, PW-5 and PW-7 (Vinod Kumar and Anita Rani) were examined and cross examined at length on 24.4.2017. Whereas application for recalling under Section 311 Cr.P.C was presented only on 11.9.2018. Petitioner has not apprise delay in making such application. Therefore, on the ground of delay in making such application as well as reasons have not been stated in the application. It seems that the application is moved only to prolong the trial and re-open the evidence because from the Annexure P-4, it is evident that there is compromise between the parteis after their examination. As compromise is not permissible under Section 302 IPC, so in order to get the witnesses hostile this application is moved. Accordingly, there is no infirmity in the order dated 11.09.2018.

5. Resultantly, petition stands dismissed.

6. At this stage, learned counsel for the petitioner pointed out from Annexure P-4 (Colly) to the extent that Vinod Kumar and Anita Rani have filed affidavit which are contrary to the evidence adduced before the trial Court dated 24.4.2017. The aforesaid issues cannot be considered in the present petition since present petition is out-come of the order dated 11.09.2018. Affidavit Annexure P-4 (Colly) is dated 15.9.2018 from which it appears that matter with the witnesses stands compromised that is why the petitioner attempted to re-open the evidence as quashing of the offence under Section 302 IPC is not permissible and petitioner wants to get the witnesses hostile at this stage.

27.09.2018

rajeev

Whether speaking/reasoned

Whether reportable

Yes/No

Yes/No

(P.B. Bajanthri)

Judge