

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

**Crl. Rev. No.3413 of 2018 (O&M)
Date of decision : 22.10.2018**

Rashid

....Petitioner(s)

Versus

State of Haryana

...Respondent(s)

CORAM: HON'BLE MRS. JUSTICE ANITA CHAUDHRY

Present: Mr. Abhilaksh Grover, Advocate
for the petitioner.

ANITA CHAUDHRY, J.

The petitioner has challenged the order passed on the application filed by him under Section 311 Cr.P.C.

I have heard the counsel for the petitioner.

Counsel for the petitioner contends that the prosecutrix had been examined on 01.05.2018 and thereafter Islam was examined and he did not support the prosecution version and had set up an agreement arrived at in the Panchayat and the victim had given an affidavit that she had made the complaint on a misunderstanding and she could not give a statement in favour of the petitioner fearing that the proceedings would be initiated against her and therefore, they may be allowed to examine the prosecutrix again in view of the the changed circumstances. The counsel submits that the application has been dismissed and the Court has not appreciated that the Court can recall the witnesses if subsequent developments take place. Reliance was placed upon *Mohan Lal Vs. State of Haryana 2000(1) CLR 370*.

The FIR in this case was registered on the complaint made by the prosecutrix. The accused was challaned and the prosecution had examined the victim in May 2018. There she made a statement against the accused. Three months later the accused filed an application, seeking recall of the prosecutrix. The trial Court dismissed the application and observed that the affidavit had been given by the victim under the pressure of the Panchayat or for other considerations and the accused could not be allowed to re-examine the witness after he had won-over the witness.

The petitioner refers to ***Mohan Lal's*** case (supra) but the same is not applicable here as in that case the accused had approached the Court for recall of the two witnesses as their counsel omitted to cross-examine the witnesses with respect to the age of the prosecutrix. The submission there was that the counsel was under the impression that the prosecution would examine the mother but later she was not produced. The trial Court rejected the prayer, however, the petition filed in the High Court was allowed as the age of the victim was important. It was held that there was an inadvertent omission on the part of the counsel and could be remedied.

The case in hand is entirely different. The accused wants the recall of the witness as he has been able to procure an affidavit of the victim. The trial Court had noted that the victim was a minor who had made allegations of rape against the accused and she stood by her statement recorded under Section 164 Cr.P.C. and even during trial. No case for recall was made out. Simply because subsequently an affidavit had been obtained, the recall application could not be allowed. I see no infirmity in the order. The accused had failed to give cogent reasons for recall of witness. The

recall was not necessary or essential in the given circumstances. There is no error or illegality. The application was rightly dismissed by the Court below.

The petition is dismissed in *limine*.

22.10.2018
sunil

(ANITA CHAUDHRY)
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No