

121.

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

CRM-M-24245-2018

Date of decision: 14.01.2019

SUKHWINDER SINGH AND ORS

...Petitioners.

Versus

KULWINDER KAUR

...Respondent.

CORAM: HON'BLE MR. JUSTICE HARI PAL VERMA

Present:- Mr. S.K. Singla, Advocate, for the petitioners.

Mr. K.B.Raheja, Advocate, for the respondent.

HARI PAL VERMA, J. (Oral)

Prayer in this petition filed under Section 482 Cr.P.C. is for quashing the order dated 08.05.2018 (Annexure P-3) passed by learned Sub Divisional Judicial Magistrate, Malerkotla, whereby the application filed by the petitioners under Section 311 Cr.P.C. for recalling the complainant for further cross-examination has been declined in a complaint filed by respondent-complainant.

Learned counsel for the petitioners has argued that cross-examination of the respondent-complainant was conducted by the earlier counsel of the petitioners and due to his mistake, the relevant question regarding her statement recorded in the case under Section 107/151 Cr.P.C. was not put to trial. However, at the later stage, when a new counsel inspected the file, he noticed the said mistake and immediately thereafter, the application was filed. He further states that the stand in the kalendra as well as in the complaint filed by the respondent is altogether at variance and, therefore, necessity has arisen to further cross-examine the complainant.

On the other hand, learned counsel for the respondent-complainant states that a mere change of counsel is not a ground to recall the witness. He further states that the statement has already been produced in the case. In support of his contention, he refers to *State of Haryana Versus Ram Mehar and others-2016 AIR (SC) 3942*; *AG Versus Shiv Kumar Yadav and another-2015 AIR (SC) 3501*; *Ammi Lal @ Immi Chand and others Versus State of Rajasthan-2002(2) RLW 1188*; *Shyam Kumar and another Versus State of U.P. and another-2003(47) ACrC 290* & *Janeshwar Dutt Versus Sanjiv Kumar-2007(2) R.C.R. (Criminal) 628*.

I have heard learned counsel for the parties.

Considering the fact that there is a variance in the stand of the complainant in the kalendra as well as in the complaint, though petitioners cannot fill up the lacuna in such a manner but they being accused and in order to meet the ends of justice, one opportunity is granted to the petitioners to cross-examine the complainant. However, that would be subject to payment of Rs.10,000/- to the complainant for delaying the matter. The case is stated to be fixed for tomorrow i.e. 15.01.2019.

In view of above, the order dated 08.05.2018 (Annexure P-3) is set aside and the present petition is disposed of accordingly.

The observations made hereinabove shall not be construed as an expression on the merits of the case and the present petition is confined only for one opportunity for cross-examination of the complainant.

(HARI PAL VERMA)
JUDGE

14.01.2019

sanjeev Whether speaking/reasoned Yes/No.
Whether Reportable: Yes/No.