

**In the High Court for the States of Punjab and Haryana
At Chandigarh**

CRM-M-7012-2017 (O&M)

Date of Decision:- 2.7.2019

Ravinder @ Minu

... Petitioner

Versus

State of Haryana and another

... Respondents

CORAM: HON'BLE MR. JUSTICE GURVINDER SINGH GILL

Present:- Dr. Anand Kumar Bishnoi, Advocate, for the petitioner.

Mr. Ashok Singh Choudhary, Addl. A.G. Haryana.

Mr. Vishal R. Lamba, Advocate, for respondent No.2.

GURVINDER SINGH GILL, J. (Oral)

1. The petitioner has approached this Court challenging order dated 18.2.2017 whereby an application filed by petitioner/accused under Section 311 Cr.P.C. seeking recalling of PW-8 Dr. Jyoti Khosia, has been declined.
2. The petitioner is facing trial for an offence under Sections 304, 120-B IPC. The prosecution during the course of trial had examined Dr. Jyoti Khosia, who had rendered her opinion regarding the cause of death. The said witness was duly cross-examined on behalf of the accused as on 22.7.2016. Subsequently, an application dated 24.1.2017 (Annexure P-2) was moved under Section 311 Cr.P.C. on

behalf of the accused seeking recalling of the aforesaid witness, when the matter was fixed at the stage of recording defence evidence. The said application was however, declined by the learned trial Court vide order dated 18.2.2017, which has been impugned by the accused by way of filing the present petition.

3. Learned counsel for the petitioner has submitted that some important questions were required to be put to the Doctor in respect of the alleged cause of death and that the term “Vasovagal syncope” was required to be explained by the Doctor and that since the same has not been done the same has adversely affected the case of the accused while seriously prejudicing him. Learned counsel has further submitted that the powers under Section 311 Cr.P.C. are very wide and any witness can be duly recalled if the same be for substantial justice and for affording proper opportunity to the accused to defend his case.
4. Opposing the petition, learned State counsel assisted by learned counsel for the complainant has submitted that the witness in question was cross-examined at length and that the application under Section 311 Cr.P.C. was misconceived and was filed mainly on account of the fact that there was a change of counsel. Learned State counsel has further pointed out that in fact the term “Vasovagal syncope” has been duly explained during the course of cross-examination and in these circumstances there is no occasion for recalling the witness.

5. I have considered rival submissions addressed before this court. Needless to mention that the powers of the Court for recalling of witness are wide, but the witness cannot be recalled merely on the asking of the accused, more particularly, when this Court finds that the witness sought to be recalled had been cross-examined at length. The aforesaid ground as set forth in the application is rather too vague to justify acceptance of an application under Section 311 Cr.P.C. The mere fact that the accused changed his counsel who felt that some more questions ought to have been asked during cross-examination of the witness would not justify recalling of the witness. Hon'ble the Supreme Court in AG vs. Shiv Kumar Yadav and Another, 2015 AIR (SC) 3501, where the High Court in revision petition had accepted an application under Section 311 Cr.P.C. and had ordered for recall of the witness, set aside the order of the High Court while observing that no finding could be recorded that the counsel appointed by the accused earlier was incompetent and that mere change of counsel cannot be a ground to recall a witness especially when the counsel had been given due opportunity of cross-examination. Examining the present case in light of ratio of above cited judgment more particularly keeping in view the fact that earlier counsel had duly cross-examined PW-8 at the stage of the trial, this Court does not find any valid ground to interfere with the impugned order vide which the application filed by the petitioner/accused under Section 311 Cr.P.C. has been dismissed. I do not find any infirmity in

the impugned order and the same is upheld. There is no merit in the present petition and the same stands dismissed.

6. It is, however, clarified that none of the observations made above shall be construed to be an expression on merits of the main case.

July 2, 2019

mohan

**(GURVINDER SINGH GILL)
JUDGE**

Whether speaking /reasoned

Yes / No

Whether Reportable

Yes / No