

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

CRM-M-25806-2019

Date of decision-03.06.2019

Prince Kalra

...Petitioner

Vs.

Heena Kalra and another

...Respondents

CORAM:- HON'BLE MR. JUSTICE MANOJ BAJAJ

Present: Mr. APS Mann, Advocate for the petitioner.

MANOJ BAJAJ, J. (Oral)

This petition has been filed by accused under Section 482 Cr.P.C for setting aside the order dated 16.02.2019 passed by learned trial Court, whereby the application filed by the petitioner under Section 311 Cr.P.C., for recalling complainant (Heena Kalra) for her re-cross examination stands dismissed.

Learned counsel for the petitioner contends that application under Section 311 Cr.P.C was filed on the ground that just before closure of the evidence of the complainant on 15.11.2018, an unfortunate incident regarding suicidal death of the father of the petitioner took place on 13.11.2018. He points out that a case FIR No.472 dated 13.11.2018 already stands registered against the complainant, namely, Heena Kalra under Sections 306 and 506 IPC read with Section 34 IPC in respect of the suicide committed by the father of the petitioner. According to the learned counsel, the suicide by father of petitioner was as a result of atrocities on her part, i.e. the complaint which abetted the crime. It is contended that there are 29 conversations between accused and the complainant in the shape of

electronic document (R-1 to R-29) and those are necessary to be put to the complainant during cross-examination.

During the course of the argument, it is fairly conceded by learned counsel for the petitioner that the electronic evidence i.e. the conversation (R-1 to R-29) has already been adduced by petitioner in defence evidence. It is also not disputed that the same evidence was available with him when the cross-examination of the complainant was in progress. It is submitted that due to inadvertence, the said material was not put to the complainant who was cross-examined on two occasions i.e. on 09.07.2018 and 14.09.2018.

Learned counsel for the petitioner contends that the application was aimed to allow the petitioner to put the said material in cross-examination to the complainant and therefore, she deserves to be recalled for further cross-examination.

After hearing learned counsel for the petitioner, this Court does not find any merit in the argument raised in support of the application filed by the petitioner under Section 311 Cr.P.C. A perusal of the impugned order reveals that the trial Court has minutely considered the facts and circumstances of the case and proceeded to dismiss the application on valid grounds which are contained in paragraph Nos.9 and 10 of the impugned order and the same are extracted below:-

“9. From the perusal of the case file, this court would like to mention that the complainant Heena has filed affidavit Ex-AW1/A in her examination in chief on 13.10.2017. After availing several opportunities and imposing cost by the court, on 09.07.2018, complainant was partly cross examined first time by Sh. Deepak Gera

Advocate, counsel for the respondent. Thereafter again, on 16.08.2018, CW-1 Heena was present but proxy counsel for the respondent requested adjournment and cross-examination was not conducted. Again on 11.09.2018, she again appeared for cross-examination but again Ld.counsel for respondent requested for adjournment and did not cross examine the complainant. The last opportunity for cross-examination was given by court. On 14.09.2018, final cross-examination of complainant Heena was done by ld counsels for the respondents/ applicant in this application, Sh Kanwaljeet Singh and Sh. Joginder singh Adv. Thereafter, on 15.11.2018, after seven opportunities of evidence of petitioner Heena, her evidence was closed by court order.

10. It is further pertinent to mention that it was on 07.12.2018 that the present application under Section 311 Cr.P.C was moved. The application seems to nothing but a dilatory tactics on the part of the learned counsel for the applicant/respondent No.1. This court is of the considered opinion that the circumstance of the case does not call for allowing the application in hand.”

In view of the observation of the trial Court, coupled with the fact that the relevant material has already been adduced in evidence by the defence, it will not be appropriate to exercise the power under Section 311 Cr.P.C to recall the complainant for re-cross-examination and confronting her with the alleged electronic conversation. However, it is also open for the defence to produce the FIR No.472 dated 13.11.2018 under Sections 306, 506 and 34 IPC in defence evidence, which is being adduced by accused.

Considering the above, this Court does not find any reason to interfere with the order passed by the trial Court.

Petition fails and the same is dismissed.

(MANOJ BAJAJ)
JUDGE

03.06.2019

vanita

Whether speaking/reasoned :

Yes

No

Whether Reportable :

Yes

No