

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

**CRM-M No.6436 of 2021
Date of Decision : 18.02.2021**

Vijay Khushwaha

.....Petitioner

Versus

State of Punjab

.....Respondent

CORAM : HON'BLE MR. JUSTICE SUDIP AHLUWALIA

Present : Mr. Atul Goyal, Advocate
for the Petitioner.

SUDIP AHLUWALIA, J. (ORAL)

Notice of motion.

2. Mr. B.S. Sewak, Addl. Advocate General, Punjab to accept notice on behalf of the Respondent/State. A copy of the Paper-book be handed over to him.

3. Ld. Counsel for the Petitioner submits that case of his client is distinguishable from the ratio of the decision of the Supreme Court in “**AG vs. Shiv Kumar Yadav and another**” – Criminal Appeal Nos.1187-1188 of 2015 (Arising out of SLP (Crl.) No. 1899-1900 of 2015) in which it was observed that mere change of Counsel cannot be a ground to recall the witnesses, since all the prosecution witnesses in the said case were sought to be recalled at the instance of the accused. However, in the present case, the Petitioner had sought to recall only three witnesses i.e. Prosecutrix (PW-1), the Medical Officer/Dr. Anupriya (PW-4) and the Investigating Officer Joginder Singh (PW-5).

4. Submits further that at this stage, the Petitioner is narrowing

down his prayer to recall only one of the aforesaid three witnesses i.e. Dr. Anupriya (PW-4) for putting a very limited question to her pertaining to the “time period under which sperm can be detected” which is material to adjudicate the question of detection in the medical examination of the Complainant.

5. From his side, Ld. State Counsel submits that he would not oppose this limited prayer of the Petitioner provided questioning of PW-4 is restricted to only the specific question as noted above, and no delay is otherwise caused in the trial.

6. In view of the above submission, the present Petition is allowed partially by setting aside the impugned order. The Ld. Trial Court is directed to grant one opportunity to recall for re-cross-examining PW-4 specifically on the above noted limited question. It is further directed that the recalled witness's costs for this purpose shall be borne by the Petitioner's side instead of the State, whose agencies shall however do the needful to secure attendance of the said witness as a Government Doctor before the Ld. Trial Court.

7. The Ld. Trial Court is further directed not to pass any final order in the case before recording the further restricted cross-examination of Dr. Anupriya (PW-4).

18th February, 2021

Dpr

(SUDIP AHLUWALIA)

JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No