
IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

119

CRM-M-9594-2021

Date of decision : 01.03.2021.

Sagar

... Petitioner

Versus

State of Punjab

.. Respondent

CORAM :HON'BLE MR. JUSTICE ANUPINDER SINGH GREWAL

Present:- Mr. Sandeep Arora, Advocate for the petitioner.

Anupinder Singh Grewal, J. (Oral)

The petitioner has challenged the order dated 22.02.2021 (Annexure P-4) passed by the trial Court whereby his application for recalling the witnesses was dismissed.

Learned counsel for the petitioner contends that two witnesses i.e. PW-1 and PW-2 which are sought to be recalled were not properly cross-examined by the previous counsel who had been engaged by the petitioner to defend him. He also contends that no prejudice would be caused if the petitioner is permitted to recall the two witnesses for cross-examination. He has relied upon the judgments of the Supreme Court in the cases of **Hoffman Andreas versus Inspector of Customs, Amritsar, 2000(10) SCC 430, Mannan Sk. and others versus State of West Bengal and another, 2014(13) SCC 59** and a Coordinate Bench of this Court in the case of **Rajiv Sood versus State of Punjab, 2016(1) RCR (Criminal) 67.**

Heard.

The petitioner was an accused in FIR No.54 dated 26.03.2019 under Section 376 of the Indian Penal Code, 1860 and Section 6 of the Protection of Children from Sexual Offence Act, 2012, Police Station Tanda, district Hoshiarpur. The prosecution had examined the prosecutrix as PW-1 while her aunt was examined as PW-2. They had been cross-examined at length. The cross-examination of PW-1 runs into three pages and was completed on 29.10.2019 while the cross-examination of PW-2 was completed on 21.11.2019. The prosecution evidence was closed on 11.02.2021. The application for recalling PW-1 and PW-2 for further cross-examination was preferred on 12.02.2021.

The cross-examination of the prosecutrix had been completed and an application for recalling her for further cross-examination cannot be allowed merely because another counsel has been engaged by the petitioner. The cross-examination of a victim in a case of sexual assault is not at par with cross-examination in other cases as the victim has gone through a traumatic experience and her re-examination would cause her hardship and harassment. She would have to relive the horrific incident.

I draw support from the judgment of the Supreme Court in the case of **AG versus Shiv Kumar Yadav and another**, reported as **2016(2) SCC 402**. In that case which pertained to a trial for offence under Section 376 IPC, an application had been made for recalling the prosecutrix on the ground that another counsel has been engaged which was allowed by the High Court. The judgment of the High Court was set aside by holding that change in counsel cannot be a ground to conduct re-trial especially in a sensitive case. The

argument with regard to incompetency of the previous counsel was also rejected by holding that competency of the counsel is subjective and the competence of a new counsel engaged can yet again be questioned by another counsel. In that case, the application for recalling the witnesses was made after 06 days of the completion of her examination while in the instant case, the application has been made after a lapse over a year.

The judgments relied upon by the counsel for the petitioner are distinguishable on facts and not applicable in the instant case.

In the case of **Hoffman Andreas versus Inspector of Customs, Amritsar (supra)**, the counsel of the accused who had cross-examined the witnesses had expired shortly thereafter and a new counsel had been engaged by the accused. It was observed that the new counsel would be at a disadvantage as he would not be able to ascertain from the erstwhile counsel as to the scheme of the defence strategy which the predeceased advocate had in mind or as to why he had not put further questions on certain aspects. It was in these circumstances that the Supreme Court allowed the recalling of the witnesses for further cross-examination. This judgment was considered and distinguished by the Supreme Court in the case of **AG versus Shiv Kumar Yadav and another(supra)** by observing that the application for recalling the witnesses in the case of **Hoffman Andreas versus Inspector of Customs, Amritsar (supra)**, was allowed in peculiar circumstances of the Advocate having expired in the midst of the trial.

In the case of **Mannan Sk. and others versus State of West Bengal and another (supra)**, the application for recalling the witness, who

was a police officer had been made as the statement of the deceased recorded prior to his death was to be placed on record. The statement was in the nature of dying declaration and therefore, the Supreme Court had held that the statement had been recorded by the witness, who was a police officer and the accused were aware of the same and they would get a chance to cross-examine the witness.

The case of **Rajiv Sood versus State of Punjab (supra)** was in regard to the recalling of a Police Officer PW-5 in a trial pertaining to a case under the NDPS Act which would not be applicable to the instant case as the prosecutrix and her aunt, who have already been cross-examined at length, are sought to be recalled for their further cross-examination.

Therefore, the application of the petitioner for recalling the witnesses on the ground of change of counsel was devoid of merit and had been rightly dismissed by the trial Court.

Consequently, the petition stands dismissed.

(ANUPINDER SINGH GREWAL)
JUDGE

March 01, 2021
sonia gugnani

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