

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

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**CRR-421-2021 (O&M)
Decided on : 09.08.2021**

BASARAT KHAN

... Petitioner(s)

Versus

STATE OF HARYANA

... Respondent(s)

**CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL
(Through Video Conferencing)**

PRESENT: Mr. Rajesh Bansal, Advocate
for the petitioner(s).

MANJARI NEHRU KAUL, J. (Oral)

A challenge has been laid by the petitioner to the order dated 08.03.2021 passed by learned Additional Sessions Judge (Fast Track Court) Panipat, wherein his application filed under Section 311 CrPC for recalling of defence witness-Rajan Singh for further cross-examination was dismissed.

Learned counsel has vehemently urged that the petitioner at whose instance the FIR in question was lodged was just seeking recalling of DW1-Rajan Singh for further cross-examination, as on the given date when this witness was examined before the trial Court, the complainant's counsel was not present in the Court and by the time he reached the Court, the cross-examination of DW1-Rajan Singh had concluded. Learned counsel has submitted that the said witness needed to be cross-examined by the complainant on certain material aspects and if an opportunity was afforded to the counsel for the complainant for cross-examining him, no prejudice would be caused to the parties concerned.

I have heard the learned counsel for the petitioner and gone through the impugned order as well as other material on record.

It would be apposite to reproduce Section 24 CrPC.

'24. Public Prosecutors:

- 1. For every High Court, the Central Government or the State Government shall, after consultation with the High Court, appoint a Public Prosecutor and may also appoint one or more Additional Public Prosecutors, for conducting in such Court, any prosecution, appeal or other proceeding on behalf of the Central Government or State Government, as the case may be.*
- 2. The Central Government may appoint one or more Public Prosecutors for the purpose of conducting any case or class of cases in any district or local area.*
- 3. For every district, the State Government shall appoint a Public Prosecutor and may also appoint one or more Additional Public Prosecutors for the district: Provided that the Public Prosecutor or Additional Public Prosecutor appointed for one district may be appointed also to be a Public Prosecutor or an Additional Public Prosecutor, as the case may be, for another district.*
- 4. The District Magistrate shall, in consultation with the Sessions Judge, prepare a panel of names of persons, who are, in his opinion fit to be appointed as Public Prosecutors or Additional Public Prosecutors for the district.*
- 5. No person shall be appointed by the State Government as the Public Prosecutor or Additional Public Prosecutor for the district unless*

6. *Notwithstanding anything contained in sub- section (5), where in a State there exists a regular Cadre of Prosecuting Officers, the State Government shall appoint a Public Prosecutor or an Additional Public Prosecutor only from among the persons constituting such Cadre: Provided that where, in the opinion of the State Government, no suitable person is available in such Cadre for such appointment that Government may appoint a person as Public Prosecutor or Additional Public Prosecutor, as the case may be, from the panel of names prepared by the District Magistrate under sub-section (4).*
7. *A person shall be eligible to be appointed as a Public Prosecutor or an Additional Public Prosecutor under sub- section (1) or sub- section (2) or sub- section (3) or sub- section (6), only if he has been in practice as an advocate for not less than seven years.*
8. ***The Central Government or the State Government may appoint, for the purposes of any case or class of cases, a person who has been in practice as an advocate for not less than ten years as a Special Public Prosecutor.***
³[Provided that the Court may permit the victim to engage an advocate of his choice to assist the prosecution under this sub-section.]
9. *For the purposes of sub- section (7) and sub- section (8), the period during which a person has been in practice as a pleader, or has rendered (whether before or after the commencement of this Code) service as a Public Prosecutor or as an Additional Public Prosecutor or Assistant Public Prosecutor or other Prosecuting Officer, by whatever name called, shall be deemed to be*

the period during which such person has been in practice as an advocate.]'

A bare reading of the provision of Section 24(8) CrPC leaves no manner of doubt that a counsel appearing for the complainant or the victim, as the case may be, can be engaged only to assist the Government pleader. The term 'assist' used in the proviso to Section 24(8) CrPC is indicative of the fact that role to be played by the counsel for the complainant/victim is just peripheral and limited. The Supreme Court in **Rekha Murarka Vs. State of West Bengal & Another** in Criminal Appeal No.1727 of 2019 has held that the role of the counsel for the complainant is only supportive and secondary in nature and the counsel for the complainant has no right to cross-examine the witness or make oral submission because it could in some cases lead to a vindictive battle between the counsel for the complainant and the accused.

Adverting to the case in hand, a perusal of the deposition of DW1-Rajan Singh, which has been annexed with the petition as Annexure P-1 reveals that the Public Prosecutor cross-examined him at length. Learned counsel for the petitioner has rather failed to satisfy this Court as to on what material aspects of the case, this defence witness needed to be re-examined. This Court, therefore, fails to comprehend as to what prejudice was caused to the complainant on the said date when DW1-Rajan Singh was examined in the absence of the learned counsel for the complainant. Not only this, it needs to be noticed that the cross-examination of this witness was done in the presence of a counsel appearing on behalf of the main

counsel for the complainant. It is not even the case of the learned counsel for the petitioner that any request for adjournment, much less, for passover of the case was made by his counsel before the Court below or that such request, if made, was declined by the Court concerned.

In the circumstances, this Court does not find any merit in the instant petition, as the impugned order comes across as a well reasoned one.

Dismissed.

(MANJARI NEHRU KAUL)
JUDGE

August 09, 2021

S.Sharma(syr)

Whether speaking/reasoned: *Yes/No*

Whether Reportable: *Yes/No*