

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

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**CRM-M-3981 of 2022
Date of Decision:11.02.2022**

Manohari Devi

..... Petitioner

Versus

Harvel Singh and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

Present: Mr. Hoshier Singh Jaswal, Advocate,
for the petitioner.

AMOL RATTAN SINGH, J. (ORAL)

Case heard via video conferencing.

By this petition, the petitioner seeks that the order of the revisional court (Addl. Sessions Judge, Kurukshetra), dated 06.01.2022, be set aside.

Vide the said order, that court has set aside the order of the learned trial court dated 30.11.2021, thereby dismissing an application filed by respondents no.1 to 4 under the provisions of Section 217 of the Cr.P.C. for recalling of witnesses for examination/re-examination, after some additional charges have been framed against them by the trial court.

A perusal of that order passed by the learned trial court (Annexure P-6) shows that the said application was dismissed on the ground that while

altering/adding to the charges vide an order dated 14.09.2021, it had been made clear that no fresh evidence would be led by either party as the substance of the charges were within the knowledge of the accused persons and the nature of the injuries were also within their knowledge and further, they had cross-examined all witnesses including doctors on the aforesaid points.

It had next been stated by that court that no reasons had been given (in the application) for recalling any witnesses and consequently the application had been filed just to delay proceedings.

Thus, the application was dismissed with costs of Rs.2000/-.

Against that order, a revision was filed before the learned Addl. Sessions Judge, which has allowed that petition vide the impugned order.

A perusal of that order shows that after referring to Sections 216 and 217 of the Cr.P.C. in extenso, and citing a judgment of the Supreme Court in **Bhimanna v. state of Karnataka (2012) 9 SCC 650**, it was held that it was the right of any person to recall/re-examine a witness after a charge had been altered; and consequently the trial court was directed to provide two effective opportunities to the accused for cross-examining either all, or as many prosecution witnesses, as they wished to examine.

Learned counsel for the petitioner reiterates the reasoning given by the learned trial court, to submit that as a matter of fact the application under Section 217 of the Cr.P.C. was filed only to delay proceedings, and simply because the offences punishable under Sections 325 and 427 of the IPC were added as charges against the accused, the earlier charges being in respect of offences

punishable under Sections 452 and 323, read with Section 34 of the IPC, there would be no reason to recall such witnesses for cross-examination, they already having been cross-examined in detail as regards the offences punishable under Sections 452 and 323 of the IPC.

Having considered the matter, though of course as regards an offence punishable under Section 325 of the IPC and one punishable under Section 323 thereof, there possibly may not be much ground for recalling witnesses, with only the extent of the injuries/the number of injuries found to be more than those that the accused were originally charged with (though more injuries found as per the evidence led could also mean the involvement of more accused), yet *de hors* even that aspect, once an offence punishable under Sections 427 of the IPC had been added, in my opinion the learned revisional court did not err in passing the impugned order, that provision being one with regard to committing mischief and thereby causing damage for an amount of Rs.50/- and above.

Consequently, Section 217 of the Cr.P.C. providing for an opportunity to either the accused or the prosecutor to recall any witnesses when a charge has been altered in terms of Section 216 of the Code, in my opinion the learned revisional court was correct in directing that two effective opportunities be granted to the accused to recall the witnesses as they wish to for cross-examination, after the charges had been altered by addition of two more offences.

Hence, this petition is dismissed, but with the trial court directed to ensure that the accused are not allowed to unnecessarily delay proceedings and if it finds them making any unnecessary delay, it would pass appropriate orders

immediately to ensure that the trial is concluded at the earliest, the FIR being of the year 2014.

February 11, 2022
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(AMOL RATTAN SINGH)
JUDGE

Whether speaking/reasoned	Yes
Whether Reportable	No