

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Sr. No. 125

CRM-M-17376-2022

Date of decision : 25.07.2022

Ashish

..... Petitioner

VERSUS

State of Haryana and another

..... Respondents

CORAM: HON'BLE MR. JUSTICE DEEPAK SIBAL

Present: Mr.Rajnikant Upadhyay, Advocate, for the petitioner.
 Mr.Sumit Jain, Addl.A.G., Haryana.

DEEPAK SIBAL, J. (ORAL)

Through the present petition filed under Section 482 Cr.P.C. the petitioner seeks quashing of the order dated 22.09.2021 passed by the Additional Sessions Judge, Fast Track Court, Sonapat (for short, the Trial Court) through which an application filed by the petitioner seeking recalling of the prosecutrix for further cross examination has been dismissed.

The petitioner, who at the time of the alleged offence, had attained majority, is accused of having kidnapped and raped the prosecutrix when she was a minor. He is also being prosecuted for extending threats to her and for having caused disappearance of evidence as also under Section 6 of the Protection of Children from Sexual Offences Act, 2012.

During the course of the petitioner's trial the prosecutrix was examined in chief before the Trial Court as PW-4. She was also cross examined by learned counsel appearing for the petitioner. Thereafter the trial progressed. On change of counsel the petitioner filed an application under Section 311 Cr.P.C. seeking therein to recall the prosecutrix for "effective" cross examination by his newly engaged counsel. Such application was dismissed by the Trial Court through the order under challenge in the instant proceedings.

Learned counsel for the petitioner submits that the previous counsel of the petitioner who was representing him in his trial could not effectively cross examine the prosecutrix and therefore the prosecutrix should be recalled to be further cross examined by his newly engaged counsel and that the acceptance of his prayer would only further the cause of justice. can effectively cross examine her and if such process is adopted the same would further in the interest of justice.

The prosecutrix was examined before the Trial Court as PW-4. Her entire statement has been placed on the record. The same reveals that after she had been examined in chief learned counsel for the petitioner had been granted a fair opportunity to cross examine her which liberty he had availed of. The prosecutrix is found to have been cross examined at length. Merely on account of change of counsel a witness cannot be allowed to be recalled as the same would lead to unnecessary delay in the disposal of the trial and further cause undue harassment to the witness to be recalled especially when such witness is a prosecutrix who alleges rape upon her when she was a minor. Moreover, the petitioner had neither shown before the Trial Court nor has shown before this Court any prejudice that would be caused to him if the prosecutrix is not recalled for further cross examination.

Dismissed.

25.07.2022
shamsher

[DEEPAK SIBAL]
JUDGE

Whether speaking/reasoned	:	Yes / No
Whether reportable	:	Yes / No