

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

**Criminal Revision No.1398 of 2022(O&M)
Date of Decision: July 07, 2022**

Sunder

...Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE HARINDER SINGH SIDHU

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Present: - Mr.Amandeep Singh Manaise, Advocate
for the petitioner.

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HARINDER SINGH SIDHU, J.

By filing the present Revision, the petitioner has challenged the order dated 01.06.2022 passed by Ld. Sessions Judge, Gurdaspur, whereby, the application of the petitioner – accused for re-calling PW1 and PW2 was dismissed.

The petitioner is facing trial in case FIR No.86 dated 07.12.2019 under Section 379-B IPC, Police Station Qadian. Statements of PW1 Sudarshan Kumar – complainant and PW2 Makhan Singh were recorded on 16.03.2020. The application for re-calling them for further cross-examination was filed on 21.04.2022 by the petitioner - accused on the ground that the previous defence counsel did not put the material questions to the said prosecution witnesses.

The Trial Court rejected the application holding that the

application had been moved two years after their cross-examination on 16.03.2020 and that mere change of counsel was no ground for recalling the prosecution witnesses.

Only a vague averment had been made in the application that material questions were not put to the witnesses by the previous counsel. Though, it was not denied that the said witnesses had been duly cross-examined by the previous counsel.

Hon'ble Supreme Court in **State (NCT of Delhi) v. Shiv Kumar Yadav, (2016) 2 SCC 402**, has held that a retrial on every change of a counsel can have serious consequences on conduct of trials and the criminal justice system. It was observed :

“15. The above observations cannot be read as laying down any inflexible rule to routinely permit a recall on the ground that cross-examination was not proper for reasons attributable to a counsel. While advancement of justice remains the prime object of law, it cannot be understood that recall can be allowed for the asking or reasons related to mere convenience. It has normally to be presumed that the counsel conducting a case is competent particularly when a counsel is appointed by choice of a litigant. Taken to its logical end, the principle that a retrial must follow on every change of a counsel, can have serious consequences on conduct of trials and the criminal justice system.”

As noticed in the order, the statements of PW1 and PW2 were recorded on 16.03.2020, wherein, they were duly cross-examined. Seven prosecution witnesses have been examined in the case. The application for

recalling PW1 and PW2 for cross-examination was filed on 21.04.2022 i.e more than two years of their deposition.

There is no ground to interfere in the impugned order.

Petition dismissed.

July 07, 2022

(HARINDER SINGH SIDHU)
JUDGE

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Whether Speaking / Reasoned	Yes
Whether Reportable	Yes / No