

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

CRM-M-30251-2022

Date of decision : 15.07.2022

Brij Mohan

.....Petitioner

versus

State of UT Chandigarh and another

..... Respondents

CORAM : HON'BLE MR. JUSTICE RAJESH BHARDWAJ

Present :- Mr. H.P.S. Ghuman, Advocate
for the petitioner.

Mr. Awnash Kumar, Advocate for
Mr. Kuldeep Tiwari, Addl. PP, UT Chandigarh.

RAJESH BHARDWAJ, J. (Oral)

Petitioner has approached this Court impugning the order dated 4th May, 2022 passed by learned Judicial Magistrate Ist Class, Chandigarh vide which the application of the petitioner filed for recalling PW-1 (name concealed) for cross-examination *qua* telephone conversation, was dismissed.

Learned counsel for the petitioner submits that the FIR in question was lodged by the complainant for the offence mentioned therein. He submits that during the course of trial, he filed application under Section 311 Cr.P.C. for recalling PW-1 (name concealed). He submits that after having cross-examined the prosecutrix, the evidence regarding phone call of the prosecutrix to the petitioner which were sent on his email ID came to his knowledge. It is because of the same, the prosecutrix could not be cross-examined by him regarding this. He submits that as the provision of Section 311 Cr.P.C. are sacrosanct and liberal in nature, recalling of the prosecutrix is essential for just decision of the case. However, learned trial Court rejected the same by passing the impugned order. Learned counsel for the petitioner also emphasized that the certificate under Section 65-B of the Evidence Act was already produced. On appreciation of the impugned order, it is found that learned Additional Public Prosecutor has argued that there is no certificate

under Section 65-B of the Evidence Act. Learned trial Court has not discussed anything about the certificate so relied upon though the certificate was issued as contended on 20th July, 2021 whereas, the impugned order has been passed on 4th May, 2022 but the same does not appear to have been produced before the trial Court at the time of filing of this application. Learned counsel for the petitioner however, contends that the certificate was produced on the record.

Learned State counsel has opposed the submissions made by counsel for the petitioner.

Without going into the controversy and the merits of the case, the Court is conscious of the fact that provisions of Section 311 Cr.P.C. are liberal in nature and is to be invoked wherever the Court finds that the same is for just decision of the case. As the counsel for the petitioner has contended that the certificate was on the record at the time of arguments before the learned trial Court which do not find any mention in the impugned order. The petitioner is referred back to the trial Court for raising his issue regarding the certificate as relied upon so as to enable the trial Court to appreciate the certificate and pass afresh order as in accordance with the law. The impugned order dated 04.05.2022 is hereby *set aside* only on account of the same. Let the trial Court decide the issue afresh in accordance with the law.

Petition is disposed of accordingly.

(RAJESH BHARDWAJ)
JUDGE

15.07.2022
m. sharma

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