

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

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CRM-M-10169-2023

Date of Decision : 27.02.2023

Shanu Khan @ Lucky

..... Petitioner

Versus

State of Haryana

..... Respondent

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present : Mr. Yash Dev Kaushik, Advocate
for the petitioner.

JAGMOHAN BANSAL, J. (Oral)

The petitioner through instant petition under Section 482 Cr.P.C. is seeking setting aside order dated 12.01.2023 whereby Additional Sessions Judge, Faridabad, has dismissed the application of the petitioner under Section 311 Cr.P.C. seeking recalling of prosecutrix for further cross-examination.

The brief facts of the case emerging from the record are that on the complaint of prosecutrix, an FIR No.119 dated 12.12.2018 came to be registered against the petitioner under Sections 323, 376, 377, 506 of IPC. The police, after completing investigation, filed its report under Section 173 Cr.P.C. alleging commission of offence. The prosecution after framing of charges led its evidence. The prosecution closed its evidence and thereafter statement of the petitioner under Section 313 Cr.P.C. was recorded. The matter came up for defence evidence. The petitioner appeared before trial Court as DW1 and stated that there was consensual relations between petitioner and prosecutrix. The petitioner thereafter moved an application under Section 311 Cr.P.C. seeking recalling of prosecutrix for further cross-examination on the question of consensual relations. The trial Court vide impugned order dated 12.01.2023 has dismissed the application of the

petitioner.

Learned counsel for the petitioner *inter alia* contends that there was consensual relations between the parties which is more or less evident from the cross-examination of the prosecutrix. The petitioner was in judicial custody, thus, the petitioner could not disclose this fact to his counsel who did not cross-examine the prosecutrix on the question of consensual relations.

I have heard the arguments of learned counsel for the petitioner and perused the record.

From the perusal of impugned order, it is quite evident that the petitioner has moved an application seeking recalling of cross-examination of prosecutrix after closing of prosecution evidence, recording of statement of the petitioner under Section 313 Cr.P.C. and leading defence evidence as DW1. The prosecutrix was cross-examined at length. It is highly improbable that the counsel for the petitioner asked many personal questions from the prosecutrix which were not mentioned in the FIR, and he was not made aware about the factum of consensual relations. The most important fact is that petitioner did not make any such disclosure in his statement under Section 313 Cr.P.C. It seems to be an afterthought. The trial Court has passed a detailed, reasoned and speaking order. There is no factual or legal infirmity in the impugned order warranting interference of this Court.

Dismissed.

(JAGMOHAN BANSAL)
JUDGE

27.02.2023
anju

Whether speaking/reasoned	Yes/No
<i>Whether Reportable</i>	<i>Yes/No</i>