

**In the High Court of Punjab and Haryana at Chandigarh  
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**2023 : PHHC : 066425  
CRM-M-20749 of 2023  
Date of Decision: 09.05.2023**

**Munna Sahni**

**---Petitioner**

**versus**

**State of Punjab and another**

**---Respondents**

**CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL**

Present: Ms. Nidhi, Advocate and  
Mr. Deepinder Singh, Advocate  
for the petitioner  
Mr. Shiva Khurmi, AAG, Punjab

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**JAGMOHAN BANSAL, J. (ORAL)**

1. The petitioner through the instant petition under Section 482 Cr.P.C. is seeking setting aside of order dated 09.12.2022 whereby Additional Sessions Judge (Fast Track Special Court), Ludhiana, has dismissed application of the petitioner under Section 311 Cr.P.C. seeking permission to recall/further cross examine prosecutrix (PW1) in FIR No. 150 dated 28.08.2021, under Sections 376, 342, 506 IPC and Section 8 of POCSO Act, registered at Police Station, Machhiwara, District Khanna, Punjab.

2. Briefly stated, the facts of the case are that on the basis of statement of respondent No. 2- prosecutrix an FIR under Sections 376, 342, 506 IPC and Section 8 of POCSO Act came to be registered against the petitioner. Police after completion of investigation filed its report under Section 173 Cr.P.C. The

prosecutrix was examined and cross examined on 14.07.2022. On 15.11.2022, the petitioner moved an application under Section 311 Cr.P.C. seeking recalling/further cross examination of the prosecutrix. Application of the petitioner came up for consideration before Additional Sessions Judge (Fast Track Special Court), Ludhiana, who vide impugned order dated 09.12.2022 has dismissed the application.

3. Learned counsel for the petitioner inter alia contends that application under Section 311 Cr.P.C. can be moved at any stage. The trial court in the interest of justice and to give appropriate opportunity to defend is supposed to permit to re-examine the prosecutrix.

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

5. The relevant extracts from impugned order read as under:-

*“Arguments heard. Judicial record perused. Judicial record makes out that the statement of prosecutrix was recorded on 14.07.2022. On that very day, her lengthy cross-examination was conducted by Id. defence counsel. It is a case under Section 342, 506, 376 of The Indian Penal Code and Section 8 of The Protection of Children from Sexual Offence Act, 2012. The crime involved in the case is serious and heinous. At this stage, the defence cannot take a plea that due to some personal reason, the prosecutrix could not be properly cross-examined by Id. defence counsel.*

*Although, the witnesses can be recalled at any stage of the case for just decision of the case. The instant application has been moved by the accused/applicant on the ground of change of counsel, but it has not been disclosed in the application as to which questions are to be put to the witness. Change of counsel is not a ground to allow the application to recall the witness for further cross-examination. Reliance is placed upon 2005(4) R.C.R.(Crl) 739 (MP), 2013(1) R.C.R.(Crl) 256 (P&H) and 2015 (30) R.C.R. (crl.) 423 (P&H). In these circumstances, application is not sustainable in the eyes of law and the same is dismissed.”*

6. From the perusal of above quoted order of trial court, this Court does not find any factual or legal infirmity warranting interference. The trial court while passing impugned order has recorded categorical findings which do not warrant interference by this Court. The petitioner has not advanced any plausible reason to re-call the prosecutrix and application under Section 311 Cr.P.C. cannot be allowed in a mechanical manner.

7. Dismissed.

09.05.2023

*paramjit*

( JAGMOHAN BANSAL )

**JUDGE**

Whether speaking/reasoned : Yes

Whether reportable : Yes/No