

NEERAJ **...PETITIONER**

VERSUS

STATE OF HARYANA ...RESPONDENT

CORAM: HON'BLE MRS. JUSTICE SUDEEPTI SHARMA

Mr. Ranvir Singh Arya, Addl. AG, Haryana.

SUDEEPTI SHARMA,J. (ORAL)

1. Petitioner is seeking direction to set aside the order dated 19.12.2023 (Annexure P-1) passed by the Court of learned Additional Sessions Judge, Gurugram vide which application under Section 311 Cr.P.C in case bearing CIS No. SC-371/2016 titled as State Versus Neeraj (FIR No.190 dated 18.02.2016, under Sections 313/376/406 IPC, registered at Police Station Gurgaon, District Gurugram) moved by the petitioner for recalling PW-1 (Complainant) for further cross-examination has been rejected.

2. Learned counsel for the petitioner contends that there are certain chats and emails between the parties which are necessary for the adjudication of the case and if they be not allowed, it will prejudice the defence of the petitioner. She has placed reliance upon the judgment of Hon'ble Supreme Court in case titled as ***Rajaram Prasad Yadav Vs. State of Bihar and Another; (2013) 14 SCC 461***. The relevant paras of the said judgment are as under:-

"17.10 Exigency of the situation, fair play and good sense should be the safeguard, while exercising the discretion. The court should bear in mind that no party in a trial can be foreclosed from correcting errors and that if proper

evidence was not adduced or a relevant material was not brought on record due to any inadvertence, the court should be magnanimous in permitting such mistakes to be rectified.

17.11. The court should be conscious of the position that after all the trial is basically for the prisoners and the court should afford an opportunity to them in the fairest manner possible. In that parity of reasoning, it would be safe to err in favour of the accused getting an opportunity rather than protecting the prosecution against possible prejudice at the cost of the accused. The court should bear in mind that improper or capricious exercise of such a discretionary power, may lead to undesirable results."

3. I have heard learned counsel for the petitioner, perused the order and examined the judgment cited by her and conclude as under:-

(i) A perusal of the impugned order shows that the testimony of prosecutrix as PW-1 was recorded on 21.09.2017, wherein she was cross-examined at length by the defence counsel.

(ii) Learned Court below observed that the defence counsel wishes to cross-examine the prosecutrix again in respect of some documents reflecting SMS, Whatsapp chats, email etc. so as to show that she was aware about marital status of accused at that time, whereas there is nothing in the application moved by the accused to explain as to what prevented him for cross-examining the prosecutrix in respect of these documents, when he was given an opportunity to do so. It is further observed that it is not the case where these documents were not in knowledge of the accused at that time and he came to know about the same later on. Rather he relied upon these documents

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the time of his bail application. Since, the petitioner was granted ample opportunity to cross- examine the prosecutrix and no new fact came to his knowledge, therefore, the application filed under Section 311 Cr.P.C was dismissed.

4. Now coming to the judgment cited by the counsel for the petitioner, relevant paras of which are reproduced above, a bare reading of which shows that the facts of the present case are distinguishable and the judgment cited by the counsel for the petitioner is of no support.

5. In view of the above, there is no infirmity in the impugned order and this Court does not find any merit in the present petition and the same is dismissed.

6. All pending applications, if any, stands disposed of.

01.02.2024
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(SUDEEPTI SHARMA)
JUDGE

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