

(2007) 01 P&H CK 0148

In the Punjab And Haryana At Chandigarh

Case No : Criminal Miscellaneous No. 63356-M of 2005

Baldev Singh

APPELLANT

Vs

State of Punjab

RESPONDENT

Date of Decision : 17-01-2007

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 164, 165, 482
Penal Code, 1860 (IPC) — Section 363, 366, 376

Citation : (2007) 3 RCR(Criminal) 826

Hon'ble Judges : Satish Kumar Mittal, J

Bench : Single Bench

Advocate : P.S. Brar, for the Appellant; N.S. Gill, A.A.G., Punjab and None for the Respondent Nos. 2 and 3, for the Respondent

Final Decision : Allowed

Judgement

Satish Kumar Mittal, J.—Petitioner Baldev Singh has filed this petition u/s 482 of the Code of Criminal Procedure for setting aside the order dated 9.9.2005, passed by Additional Sessions Judge, Faridkot, whereby the prosecutrix Prabhjot Kaur has been ordered to be re-summoned for further cross-examination in case F.I.R. No. 75 dated 1.6.2004, registered at Police Station Sadar, Faridkot, under Sections 363/366/376 I.P.C.

2. In this case, when all the prosecution witnesses were examined at length, an application for re-calling P.W.4 Prabhjot Kaur prosecutrix for her further cross-examination with regard to her age was filed by the accused after change of their counsel. It was stated that proper questions with regard to her age, whether she was ready for ossification test or not, actual occurrence, time and manner relating to her rape and as to whether her statement u/s 164 Code of Criminal Procedure was recorded after her consent or not, could not be put to the prosecutrix. The trial Court allowed the said application, while observing as under:

8. The perusal of the cross examination of this witness shows that she has not

been cross examined on some material points which are necessary for coming to the right conclusion. So the present application is also allowed and P.W.4 Prabhjot Kaur is allowed to be resummoned and cross-examined.

The said order has been challenged in this petition.

3. While issuing notice of motion on November 21, 2005, operation of the impugned order was stayed. Mr. P.P.S. Tung, Advocate, appeared for Respondents No. 2 and 3 and filed reply on their behalf. But at the time of hearing the final arguments in the petition, he was not present.

4. Counsel for the Petitioner argued that the prosecutrix was cross examined by the counsel for the accused at length in respect of all the aspects i.e. with regard to actual occurrence, time and manner and other circumstances, including her statement u/s 165 Code of Criminal Procedure He further submitted that the trial Court, while passing the impugned order for re-summoning the prosecutrix for further cross-examination, has not applied its mind, and did not record any valid reason. Therefore, the impugned order is not sustainable.

5. After hearing counsel for the Petitioner and counsel for the Respondent- State and going through the record of the case, I am of the opinion that the impugned order is not sustainable. The trial Court has resummoned the prosecutrix at a belated stage without any justification. She was thoroughly cross examined by counsel for the accused. Merely with the change of a counsel, a witness cannot be recalled for further cross-examination. In this case, no case for re-calling the witness was made out. In spite of that, without application of mind, the trial Court has ordered the prosecutrix to be re-summoned for further cross-examination. Thus, the impugned order is not sustainable.

6. In view of the above, this petition is allowed and the order dated 9.9.2005, passed by Additional Sessions Judge, Faridkot, is set aside.