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

CRR-938-2026 (O&M)
Date of decision: 10.04.2026

MANVIR SINGH

...PETITIONER

VERSUS

STATE OF PUNJAB AND OTHERS

...RESPONDENTS

CORAM: HON'BLE MS. JUSTICE SHALINI SINGH NAGPAL

Present: Mr. Damanjit Singh Sandhu, Advocate
for the petitioner.

SHALINI SINGH NAGPAL J.

1. The revision petition impugnes order dated 16.01.2026 of learned Additional Sessions Judge, (Fast Track Special Court) Ludhiana, vide which petitioner's application under Section 348 BNSS was dismissed.
2. Learned counsel for the petitioner submits that FIR No.92 dated 29.04.2024 was registered against the petitioner, who was charge-sheeted by the Special Court under Sections 354, 376 Indian Penal Code and Section 10 Protection of Children from Sexual Offences Act, 2012 on 06.07.2024. Thereafter, the charge was amended and was framed under Section 6 of the POCSO Act. Petitioner filed an application for recalling PW1 prosecutrix and PW2, her mother for further cross-examination which learned trial Court illegally declined. He further submits that impugned order was unsustainable and was liable to be set aside as cross-examination of the witnesses was essential for just proper adjudication of the case, after framing of amended charge-sheet.
3. Section 348 BNSS empowers the Court to recall any witness at



any stage of the trial if his or her evidence appears to be essential for just decision of the case. Though a wide discretionary power is conferred upon the Court, discretion is to be exercised judiciously.

4. In the case before us, initially, charge-sheet was framed against the petitioner under Section 354, 376 IPC and Section 10 of the POCSO Act on 06.07.2024. PW1 prosecutrix and PW2 mother of the prosecutrix were examined and cross-examined on 06.09.2024 and 13.09.2024. Subsequently, on 04.10.2024, charge was amended and petitioner/accused was charge-sheeted under Section 354 and 376 IPC and in alternative, under Section 10 and Section 6 POCSO Act. Record shows that on that very day, learned Addl. PP for the State suffered statement that after amendment of charges, she did not intend to recall the prosecutrix and her mother. The same day, defence counsel also suffered statement that he did not intend to cross-examine any witness after amendment of charge. It further transpires from impugned order that a new counsel was engaged who moved an application for recall of the prosecutrix and her mother which learned trial Court declined on the ground that effective opportunity had already been granted to the defence counsel after amendment of charge which he did not avail.

5. In **State (NCT of Delhi) Vs. Shiv Kumar Yadav and Another, 2015 SCC OnLine SC 799**, Hon'ble Supreme Court has observed that mere change of a counsel cannot be ground to recall a witness. It was observed thus:-

“10. It can hardly be gainsaid that fair trial is a part of guarantee under Article 21 of the Constitution of India. Its content has primarily to be determined from the statutory provisions for conduct of trial, though in some matters where



statutory provisions may be silent, the court may evolve a principle of law to meet a situation which has not been provided for. It is also true that principle of fair trial has to be kept in mind for interpreting the statutory provisions.

11. *It is further well settled that fairness of trial has to be seen not only from the point of view of the accused, but also from the point of view of the victim and the society. In the name of fair trial, the system cannot be held to ransom. The accused is entitled to be represented by a counsel of his choice, to be provided all relevant documents, to cross-examine the prosecution witnesses and to lead evidence in his defence. The object of provision for recall is to reserve the power with the court to prevent any injustice in the conduct of the trial at any stage. The power available with the court to prevent injustice has to be exercised only if the court, for valid reasons, feels that injustice is caused to a party. Such a finding, with reasons, must be specifically recorded by the court before the power is exercised. It is not possible to lay down precise situations when such power can be exercised. The legislature in its wisdom has left the power undefined. Thus, the scope of the power has to be considered from case to case. The guidance for the purpose is available in several decisions relied upon by the parties.”*

6. In ***State of Haryana Vs. Ram Mehar & Others Etc. 2016(4) RCR(Criminal) 154***, Hon’ble Apex Court was dealing with a similar situation, wherein application for recalling some prosecution witnesses for cross-examination was made on the ground that counsel engaged earlier by



the defence did not put certain questions to the witnesses. The High Court allowed the said application, which order was subsequently set aside by the Apex Court holding that the accused had engaged counsel of their choice and in such a situation, recalling of witness indubitably cannot form the foundation. It was further held that it is normally to be presumed that the counsel conducting a case is competent, particularly when a counsel is appointed by choice of a litigant. While holding that the approach must be liberal, a word of caution was added that magnanimous should not mean to convey individual generosity.

7. It is not that opportunity to cross-examine the material witnesses has been denied to the petitioner/accused. It has been recorded in the impugned order that full opportunity was afforded to defence counsel to cross-examine both witnesses who were called twice on 06.09.2024 and 13.09.2024. In the opinion of the Court, recall of the witnesses already examined cannot be permitted when, after amendment of charge, an opportunity was afforded to defence counsel but was not availed. Even though, charge under Section 6 of POCSO Act was framed subsequently, the petitioner had already been charge-sheeted under Section 376 IPC and Section 10 POCSO Act in the first instance. Petitioner undoubtedly is entitled to fair trial. The concept of fair trial requires fairness to the accused as also the victim. Concept of fair trial cannot be stretched limitlessly in favour of the accused and the Court is required to strike a just balance between prosecution, the victim as also the accused. As per Section 33 of the POCSO Act, a Special Court is not to call the child repeatedly to testify in the Court. Already the victim has been called twice for cross-examination and her recall yet again could not have been permitted. There is no apparent



illegality or perversity in the impugned order dated 16.01.2026 warranting exercise of revisional jurisdiction of this Court under Section 438 BNSS.

8. Even otherwise, no revision petition is maintainable against an order dismissing the application under Section 311 Cr.P.C. in view of law laid down in “*Sethuraman Vs. Rajamanickam 2009 (5) SCC 153*”, the order being interlocutory in nature.

9. The revision petition is dismissed.

10. Pending miscellaneous applications, if any, stand disposed of.

(SHALINI SINGH NAGPAL)
JUDGE

10.04.2026

Sumit Singla

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