

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

**Cr.MMO No. 125 of 2020
Reserved on: 29.07. 2021
Date of Decision: 30.07.2021**

Manish Kumar alias Monu @ Master ...Petitioner

Versus
State of H.P. and another ...Respondents

Coram:
The Hon'ble Mr. Justice Anoop Chitkara, Judge.

***Whether approved for reporting?*¹**

For the petitioner: Mr. Ajay Kochhar, Advocate.

For the respondent: Mr. Nand Lal Thakur, Additional Advocate General, with Mr. Ram Lal Thakur & Sunny Dhatwalia, Assistant Advocates General and Mr. Rajat Chauhan, Law Officer, for respondent No.1.

THROUGH VIDEO CONFERENCE

FIR Number	FIR No.57/17, dated 22.03.2017, registered in Police Station Theog, District Shimla under Sections 376D, 363 of IPC and Section 4 of POCSO Act.
Cr.MP Number Before Special Judge	Number 63-S/4 of 2020 in CIS No.177/2020, Decided on 23.01.2020.

Anoop Chitkara, Judge

Challenging the order passed by learned Special Judge, Shimla, allowing the application of the prosecution to

¹ Whether reporters of Local Papers may be allowed to see the judgment? Yes

re-examine the Investigating Officer as well as a Lady Constable, the accused has come up before this Court.

2. The State had filed an application for recalling the witnesses before learned Special Judge, Shimla. It is relevant to extract paragraphs No. 2 and 3 of the same, which read as under:-

“2. That during the examination of PW-29, ASI Purshotam who is the investigating officer, it has come on record that he had prepared the memo exhibit 29/O vide which the recovery of condom i.e. exhibit PW-38 was made at the instance of accused Krishan Kumar. However, the said case property was not shown to the investigating officer at the time of trial inadvertently. Hence, the said witness i.e. PW-29 is required to be re-called and to prove the link.

3. That during the examination of PW-1, Dr. Mukta Sharma, it has come on record that the samples of the child victim which were taken by PW-1 were handed over to L.C. Ranjeeta PW-12. The said witness PW-12 is required to be re-called in order to prove the link.”

3. The accused filed response to the said application and opposed the same.

4. Vide order dated 23.01.2020 passed in Cr.MP No. 63-S/4 of 2020, learned Special Judge, Shimla, allowed the application.

5. Now, the petitioner-accused has come up before this Court to set-aside the order for recalling of the witnesses.

6. Mr. Ajay Kochhar, learned counsel for the accused, has argued that all proceedings and steps in the trial were concluded, except pronouncement of judgment. He drew attention of this Court to order dated 22.06.2019, which reflects that the arguments were heard. Learned counsel submits that in between the State filed an application for recalling the witnesses and the matter is hanging fire and the accused are in the jail for the last two years. This cannot be a legal ground for upsetting the impugned order or not to recall the witnesses.

7. Another argument of learned counsel for the accused is that in the MLC and the statements, already recorded, of the witnesses, there is contradiction regarding the point and the prosecution wants to fill up lacuna.

8. Be that as it may, even if there is contradiction in the statements, it is always subject to judicial scrutiny given settled law that improvements also amount to contradictions.

9. I have gone through the impugned order, which is well reasoned and I find no infirmity in same.

Given above, the petition is dismissed. The registry is directed to return the record, if any, forthwith.

**Anoop Chitkara,
Judge**

30 July, 2021
(R. Atal)