

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-47361 of 2023(O&M)

Reserved on: 20.08.2025

Date of Order:25.08.2025

Nikhil Sayal

.Petitioner

Versus

State of Haryana

..Respondent

CORAM: HON'BLE MS. JUSTICE SHALINI SINGH NAGPAL

Present: Mr. Bharat Chugh, Advocate
Mr. Karnesh Verma, Advocate
for the petitioner (through VC)

Mr. Vishal Kashyap, Sr. DAG, Haryana

Ms. Monika Thakur, Advocate,
for the complainant.

SHALINI SINGH NAGPAL, JUDGE

1. Order dated 22.08.2023, of learned Additional Sessions Judge, Gurugram, has been challenged in this petition under Section 482 Cr.P.C. Vide this order, the petitioner's application under Section 231(2) Cr.P.C. was dismissed.

2. The facts, relevant for disposal of the controversy, are that one Rahul Singh son of Thaman Singh lodged a complaint stating that for the last 2-3 years, he and his family members were living in the house of Sanjay Grover and Shabnam Grover, who he regarded as his brother. That day, at around 1-1.30pm, his brother and sister-in-law had to go somewhere. He, his wife and children were present in the house when 4-5 people entered the house and thrashed them. They dragged his wife to another room and did '*Galat harkat*'. Nikhil tried to do '*Galat Harkat*' and then took him, his wife

and children in their car. They were forcibly dropped at Bakhtawar Chowk and threatened with death. Then, they went to their old house in Sector 14, where those persons followed them. He narrated the incident to his brother Sanjay Grover and sister-in-law Shabnam Grover. Then they came to CK Birla Hospital where he was getting treatment. Nikhil and his friends were calling each other by the names of Rohit, Bahadur, Shobhit etc.. Two other ladies who accompanied them were calling themselves as Nikhil's wife and mother-in-law. They kept their belongings in the house. Nikhil and his friends, entered his house and tried to do '*Galat Harkat*' with his wife; they thrashed him, forcibly made him sit in the vehicle and dropped him.

After completion of investigation, final report under Section 173 Cr.P.C was presented in the case.

Vide order dated 05.12.2022, the petitioner and others were charge sheeted for commission of offences punishable under Section 323/365/380/452/506/34 IPC and Section 376/511, 354 IPC The case was fixed for prosecution evidence.

On 15.05.2023, two witnesses of the prosecution were present but could not be examined as an application under Section 231(2) Cr.P.C. was moved by the petitioner/accused. The prayer in the application was that five witnesses, namely, Rahul Singh-Complainant, the prosecutrix, Shabnam, Sanjay Grover, Rakesh Chugh be examined-in-chief and cross examination of all five be deferred as they were witnesses on the same set of facts and were related to each other.

Vide impugned order dated 22.08.2023, learned trial Judge disposed of the application observing as under:-

“.....However, there won't be any need to defer their

cross-examination, since the court would be examining these witnesses one by one on three consecutive days. After due consultation with the learned defence counsels, the learned counsel for the prosecutrix as well as learned Public Prosecutor for the State, now all the aforesaid witnesses shall be examined on 28.09.2023, 29.09.2023 and 30.09.2023. Consequently, the present application is hereby partly allowed. The accused as well as learned defence counsels and learned counsel for the prosecutrix have been apprised of the fact that only these witnesses shall be examined on the aforesaid dates starting with the complainant.....”

Learned counsel for the petitioner has argued that witnesses Rahul Singh-Complainant, the prosecutrix, Shabnam, Sanjay Grover, Rakesh Chugh were all related to each other and their deposition was about the same set of facts, therefore, in view of the law laid down in **State of Kerala vs. Rasheed, (2019) 13 SCC 297**, it was in the fitness of things to defer cross-examination of all these witnesses after recording their examination-in-chief, as cross-examination of any of the witnesses would result in disclosure of defence and would result in subsequent improvement of the statements. It was argued that the case against the petitioner was based on false and frivolous complaint which was merely a counter blast attack in the background of previous disputes between both the sides.

The only submission of learned State counsel and learned counsel for the complainant is that all the five witnesses were not to depose on the same set of facts as only the complainant-Rahul Singh and

prosecutrix were present at the time of the alleged incident.

In a criminal case, prosecution is the master of the proceedings and generally has the prerogative to decide on the order in which the witnesses are to be examined. This is regulated by Section 135 of the Indian Evidence Act, 1872.

Section 231(1) Cr.P.C. is analogous to Section 309 Cr.P.C. while Sub-Section 2 of Section 231 Cr.P.C. carves out an exception. Section 231 Cr.P.C. is reproduced hereunder for ready reference:-

231. Evidence for prosecution.—

(1) on the date so fixed, the Judge shall proceed to take all such evidence as may be produced in support of the prosecution.

(2) The Judge may, in his discretion, permit the cross-examination of any witness to be deferred until any other witness or witnesses have been examined or recall any witness for further cross-examination.”

Hon'ble Supreme Court of India in **State of Kerala vs. Rasheed (2019) 13 SCC 297**, has observed thus:-

“23. While deciding an Application under Section 231(2) of the Cr.P.C., a balance must be struck between the rights of the accused, and the prerogative of the prosecution to lead evidence. The following factors must be kept in consideration:

(i) possibility of undue influence on witness(es);

(ii) possibility of threats to witness(es);

(iii) possibility that non-deferral would enable

subsequent witnesses giving evidence on similar facts to tailor their testimony to circumvent the defence strategy;

(iv) possibility of loss of memory of the witness(es) whose examination-in chief has been completed;

(v) occurrence of delay in the trial, and the non-availability of witnesses, if deferral is allowed, in view of [Section 309\(1\) of the Cr.P.C.](#)”

Thus, the trial Judge may, in his discretion, permit cross-examination of any of such witnesses to be deferred, until any other witness or (witnesses) have been examined.

Many a times, in a criminal trial, prosecution is called upon to produce more than one witness of the same event. In the case in hand, PW-Rahul Singh and his wife, the prosecutrix, were to be examined regarding the same event and same set of facts. They are both related to each other. In this situation, if both witnesses PW-Rahul Singh and his wife, the prosecutrix, are called and their deposition is recorded in normal course one after the other, on two separate dates, defence is bound to be disclosed. The possibility of either of the witnesses, who is examined subsequently on another day, modulating his version cannot be ruled out. It is indeed possible that defence would stand prejudiced. Duty of the Court is to give a fair trial to the accused. In the fact situation of the case, learned trial Judge ought to have exercised his discretion under Section 231(2) Cr.P.C. and permitted cross-examination of at least one witnesses to be deferred. Deferment of cross-examination of all the witnesses was not required but a balance could have been struck, while permitting some leeway in the form of

deferment of cross-examination of only witness Rahul after the prosecutrix had been examined.

In this view of the matter, order of learned Additional Sessions Judge, Gurugram, dated 22.08.2023, is not justified and is set aside. Learned trial Court is required to record examination-in-chief of PW-Rahul Singh and defer his cross-examination to be recorded after his wife, the prosecutrix, is examined the following day. Rest of the witnesses, namely, Shabnam, Sanjay Grover and Rakesh Chugh are not witnesses of the incident. It is not prosecution case that they were present at the spot of occurrence on the given date and time. Therefore, learned trial Judge may examine them on the day, following conclusion of cross-examination of PW-Rahul and the prosecutrix. It goes without saying that the witnesses shall be examined on day to day basis.

The petition under Section 528 of Bhartiya Nagarik Suraksha Sanhita, 2023, is allowed to the extent above.

All the pending miscellaneous applications, if any, stand disposed of.

(SHALINI SINGH NAGPAL)
JUDGE

25th August, 2025

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