

Court No. - 50

Case :- CRIMINAL REVISION No. - 2580 of 2023

Revisionist :- Jahur

Opposite Party :- State Of U.P. And 4 Others

Counsel for Revisionist :- Anil Kumar

Counsel for Opposite Party :- G.A.

Hon'ble Ram Manohar Narayan Mishra,J.

This criminal revision has been filed against the order dated 8.2.2023 passed by Additional Sessions Judge/ Special Judge (POCSO Act), Shamli whereby application under Section 311 Cr.P.C. moved by the revisionist has been dismissed.

Heard learned counsel for the revisionist and Sri Harish Shukla holding brief of counsel for the respondent no. 2 and learned AGA for the State.

Learned counsel for the revisionist submitted that PW-1 is informant and PW-2 is victim. The victim is around 10 years at the time of incident as per the prosecution version. F.I.R. was lodged against the accused under Sections 323, 354, 452, 504, 506 IPC and 7/8 of POCSO Act on 7.9.2021 in relation to the incident dated 5.9.2021 whereas informant has leveled accusation of molestation of his minor daughter by the accused revisionist and has also leveled allegation against wife of the accused, who has accompanied the accused subsequently to the incident of molestation. He submitted that after cross examination of PW-1 and PW-2, accused moved an application before the court below for further cross examination of PW-1 and PW-2 on certain questions, which are specified in application u/s 311 Cr.P.C. but the court below has rejected the application mainly on the ground that PW-1 and PW-2 are cross examined in extensive manner and the application has been moved only with a view to linger on the proceedings of the case.

Learned counsel appearing for respondent no. 2 submitted that respondent no. 2 has no objection over the prayer of the revisionist in present revision with regard to provide opportunity of further cross examination of PW-1 and PW-2. Counter affidavit has been filed by respondent no. 2 to the contentions made in the revision.

Per contra, learned AGA submitted that examination and cross examination of PW-1 and PW-2 was over before the court below, there is no need to recall PW-1 and PW-2 for further cross examination as prayed for by the revisionist before the court below and the learned court below has rightly rejected the application under Section 311 Cr.P.C. moved by the revisionist.

Section 311 Cr.P.C. provides as under:-

"311. Power to summon material witness, or examine person present. Any Court may, at any stage of any inquiry, trial or other proceeding under this Code, summon any person as a witness, or examine any person in attendance, though not summoned as a witness, or recall and re-examine any person already examined; and the Court shall summon and examine or recall and re-examine any such person if his evidence appears to it to be essential to the just decision of the case."

From perusal of provision of Section 311 Cr.P.C. it is crystal clear that the power conferred under Section 311 Cr.P.C must be invoked by the court only in order to meet the ends of justice, for strong and valid reasons, and the same must be exercised with great caution and circumspection.

The Hon'ble Apex Court in Manju Devi Vs State of Rajasthan on 16 April, 2019 in Criminal Appeal No.688 of 2019 (Arising out of SLP (Crl.) No. 8315 of 2018), held that the age of a case, by itself, cannot be decisive of the matter when a prayer is made for examination of a material witness. In present case, accused revisionist has specified the questions, which are to be posed before PW-1 and PW-2 in further cross examination.

In view of the fact that revisionist has specified the questions in application under Section 311 Cr.P.C. and no objection has been raised by the respondent no. 2 in present revision, who is mother of the victim and informant, the revision is liable to be allowed in the interest of justice. The learned court below has failed to consider the fact that accused has specified the questions in application u/s 311 Cr.P.C. which are proposed to be asked before the witnesses therefore, impugned order is suffering from legal infirmity. The court below has also not examined the questions which are to be posed before the PW-1 and PW-2 from their statement recorded before the court below, therefore, impugned order is set aside.

The present revision is **allowed**.

The court below is directed to provide an opportunity of further cross examination of PW-1 and PW-2 on the questions, which are specified in application under Section 311 Cr.P.C. and no other questions will be permitted to be asked to PW-1 and PW-2, which has not been specified in said application.

Order Date :- 27.10.2023

Dhirendra/