



2024:UHC:8764

HIGH COURT OF UTTARAKHAND AT NAINITAL

Criminal Misc Application No.55 of 2024

26 November, 2024

Pinki Devi

--Petitioner

Versus

State of Uttarakhand

--Respondent

Presence:-

Mr. Varun Agarwal, Advocate for the petitioner

Mr. G.S. Sandhu, Addl. Advocate General with Ms. Mamta Joshi, Brief Holder for the State.

Hon'ble Vivek Bharti Sharma, J. (Oral)

By means of present petition, petitioner seeks quashing of order dated 03.07.2024 passed by learned Special Judge (POCSO)/Additional Sessions Judge, Dehradun in Special Sessions Trial No.09 of 2024, whereby the application filed by the petitioner/complainant under section under Section 311 of Cr.P.C. (*the criminal procedure law as then was*) was dismissed.

2. Learned Additional Advocate General for the State would submit that the application moved by the petitioner/complainant u/s 311 of Cr.P.C. seems to have been filed at the instance of the accused. He would further submit that from the perusal of the testimony of the prosecutrix/victim it is evidently clear that she has given credible, trustworthy and unequivocal statement against the accused in minute details; that, not only this,



the victim as PW1 had also identified the accused during the trial.

3. Learned State Counsel would further submit that this petition u/s 528 of *Bhartiya Nagarik Suraksha Sanhita* against the order of rejection of the application u/s 311 of Cr.P.C. to re-examine the prosecutrix/victim i.e. her daughter, is filed in order to give benefit to the accused, which is quite evident from the fact that the petitioner/complainant in her evidence on oath recorded in the trial court has turned hostile, i.e. to say, that she has not supported the prosecution case in the trial court notwithstanding the fact that there is clinching medical evidence against the accused in the case.

He would further submit that the application u/s 311 of Cr.P.C. was moved on 01.06.2024 whereas the petitioner/complainant was examined in the trial court on 12.09.2024 i.e. around three and half months after moving the application u/s 311 Cr.P.C.

4. Learned State Counsel would further submit that even sub-section (5) of Section 33 of POCSO Act says that the victim should not be repeatedly called for evidence in the court.

5. Learned State Counsel would further submit that the reply/objection to the petition is ready and would seek permission of the Court to supply the same in the Court today. Reply/objection is taken on record. Registry is directed to paginate it properly.

6. In view of the above submission, this Court



perused the record.

7. This Court is in agreement with the submissions made by learned Additional Advocate General. It appears to this Court also that the petitioner/complainant has been pressurized or influenced by the accused to file the application u/s 311 of Cr.P.C. for recalling the prosecutrix/victim for evidence of this heinous crime of sexual offence and when the same was rejected present petition was filed.

8. For the reason recorded above, present petition is dismissed *in limine*. The Investigating Officer is directed to investigate the circumstances under which the petitioner/complainant moved the application u/s 311 Cr.P.C. before the trial court as also the present petition before this Court and after investigation, if he is of the view that the petitioner/complainant was compelled or influenced by the accused or any other person acting on his behalf then he is at liberty to take appropriate steps as per law.

(Vivek Bharti Sharma, J.)

26.11.2024

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