



2025:UHC:3891

HIGH COURT OF UTTARAKHAND AT NAINITAL

Criminal Misc Application No. 487 of 2025

08 May, 2025

Nafees Ahmad

--Petitioner

Versus

State of Uttarakhand & Another

--Respondents

Presence:-

Mr. Harshpal Sekhon, Advocate for the petitioner.

Mr. Deepak Bisht, learned D.A.G. for the State.

Hon'ble Vivek Bharti Sharma, J.

This criminal miscellaneous application has been filed by the petitioner/accused under Section 528 of the Bharatiya Nagarik Suraksha Sanhita (*for short, B.N.S.S.*) seeking recall of PW1 for examination, as prayed for in the application previously filed under Section 311 of Cr.P.C. (*now Section 348 of the B.N.S.S.*). Petitioner/accused also seeks to quash the order dated 24.08.2024 passed by the learned Additional Sessions Judge/Fast Track Special Court, Rudrapur, District Udham Singh Nagar in Special Sessions Trial No. 854 of 2023 “*State vs. Nafees Ahmad*”, whereby the learned trial court has



dismissed the application moved by the petitioner/accused under Section 311 of Cr.P.C. for recalling PW1.

2. Brief facts of the case are that on 21.07.2023 F.I.R. No. 316 of 2023 was registered at Police Station Khatima, District Udham Singh Nagar, under Sections 354 of IPC and Sections 9/10 of POCSO Act against the petitioner/accused with the allegations of outraging the modesty of women. It was also alleged that the petitioner/accused, who is employed as a teacher in the school where PW1 to PW6 are students, indulged in eve-teasing and inappropriate behavior toward the said girl students.

3. After completion of investigation, charge-sheet dated 27.08.2023 was filed against the present petitioner/accused; that, six victims had initially levelled allegations against the petitioner/accused, while the remaining persons cited in the charge-sheet are other witnesses. Subsequently, the trial commenced, and nine prosecution witnesses have been examined before the learned Trial Court.



4. Learned counsel for the petitioner/accused would submit that out of six victims, four victims, namely PW3, PW4, PW5 and PW6 did not support the prosecution case and turned hostile, however, two victims, PW1 and PW2 supported the prosecution version; that, an application was moved by father of PW1 u/s 311 of Cr.P.C. seeking to recall PW1 for re-examination on the ground that her original testimony was given under pressure from local leaders of a religious organization; that, this application was rejected by the learned Trial Court; that, thereafter present petitioner/accused also moved an application u/s 311 of Cr.P.C. seeking recall of PW1 but this application has also been dismissed by the Trial Court vide impugned order dated 24.08.2024.

5. Learned counsel for the petitioner/accused would further submit that the application filed u/s 311 of Cr.P.C. by the father of PW1 was rejected by the learned Trial Court merely on the ground that in paragraph no. 7 of the said application, PW2 was mentioned instead of PW1. He would submit that this



was a mere typographical error which cannot be a valid ground to dismiss an application that seeks to bring forth the truth and ensures fair trial.

6. He would further submit that the application moved by the father of PW1 when read conjointly with the testimony of PW2 finds substance and raises serious concern regarding external influence. He would submit that PW2, in her cross examination, stated at paragraph no.4 that she arrived in the court with one Harish Rana (*Pradhan*) who is a leader of *Bajrang Dal* in his vehicle and on the last occasion also, she came with Harish Rana and Himanshu Kanyal who is also a leader of *Bajrang Dal*. In paragraph no.6, she further stated that it is true that *Himanshu Kanyal* and *Harish Rana* went to the Police Station to lodge the complaint against the petitioner/accused.

7. Learned counsel for the petitioner/accused would further submit that the above facts clearly demonstrate that the petitioner/accused is innocent and has been a victim of political conspiracy; that, there are also discrepancies in the statement of PW2



with respect to the place of incident; that, there has been no complaint of any manner against the petitioner/accused in his entire career as a teacher. He would, thus, submit that all these circumstances when taken cumulatively, strengthens the case of petitioner/accused for recalling PW1.

8. Per contra, learned State counsel would vehemently oppose the present petition on the ground that victims in their statements clearly stated that petitioner/accused misbehaved with them where CCTV cameras were not installed; that, PW1 in her statement recorded before the trial court fully supported the prosecution case.

He would further submit that the application under Section 311 of Cr.P.C. was presented by father of PW1/victim stating that the statement given by the PW1/victim before the court below was false and was made under political pressure but it has not been mentioned therein that who was that local leader and when this threat was given.



He would further submit that the application filed by the petitioner/accused under Section 311 Cr.P.C. appears to be collusive in nature and is closely aligned with the earlier application filed by the father of PW1, who is allegedly acting in concert with the petitioner/accused. He would thus submit that the said application lacks bonafides and has been filed with ulterior motive of discrediting and tarnishing the testimonies of prosecution witnesses, particularly PW1 and PW2, who have supported the prosecution case.

He would further submit that PW1/victim has been examined before the court on 05.02.2024 and has also been cross-examined at length by the defence side.

9. Learned State counsel would further submit that the application under Section 311 of Cr.P.C. was moved after some time of recording of the statement and cross-examination of the prosecutrix/victim as PW1 in the trial court as there is a caution contained in sub-section (5) of Section 33 of the POCSO Act which explicitly provides that Special Court shall



ensure that the child is not called repeatedly to testify in the court.

10. Learned State Counsel would further submit that the learned Trial Court upon considering the application filed by the petitioner/accused u/s 311 of Cr.P.C. rightly came to the conclusion that the petitioner/accused has failed to disclose any specific or relevant questions that were left unasked during the initial cross-examination of the prosecutrix/victim (PW1), which could materially affect the outcome of the case; that, prosecutrix/victim had already been extensively examined on all material aspects of the case.

He would submit that the application filed by the petitioner/accused under Section 311 Cr.P.C. is nothing but a strategic attempt of the petitioner/accused to merely recall the prosecutrix/victim, not for the purpose of eliciting any material truth, but to harass her and cause undue delay in the ongoing trial proceedings.

He would further submit that the trial has



been ongoing for nearly two years and such repeated and unwarranted applications obstruct the expeditious conclusion of the trial, thereby defeating the very objective of ensuring timely justice under the POCSO Act.

11. Having heard learned counsel for the parties and on perusal of the record, this Court is of the considered view that the question which falls for consideration of the Court is whether in exercise of its powers under Section 311 of Cr.P.C., learned Trial Court ought to have recalled the child/victim (PW1) for further examination, particularly in light of the statutory mandate contained in Section 33(5) of the POCSO Act.

12. On the subject matter, Hon'ble Supreme Court has succinctly laid down the principles governing the exercise of a Court's power under Section 311 of Cr.P.C. in the case of '**State (NCT of Delhi) vs. Shiv Kumar Yadav**', (2016) 2 SCC 402. In the said judgment, the Hon'ble Supreme Court has held that, *firstly, a plea for recall of a witness under Section 311 must be bona fide and genuine. Secondly,*



such applications should not be entertained as a matter of routine or course. The discretion conferred upon the Court under this provision must be exercised judiciously, keeping in mind the interests of justice, and not in an arbitrary or mechanical manner.

13. The Hon'ble Supreme Court in the case of **'Swapn Kumar Chatterjee vs. CBI', (2019) 14 SCC 328** has held as follows:-

"It is well settled that the power conferred under Section 311 should be invoked by the court only to meet the ends of justice. The power is to be exercised only for strong and valid reasons and it should be exercised with great caution and circumspection. The court has wide power under this section to even recall witnesses for re-examination or further examination, necessary in the interest of justice, but the same has to be exercised after taking into consideration the facts and circumstances of each case. The power under this provision shall not be exercised if the court is of the view that the application has been filed as an abuse of the process of law."

14. Applying the aforementioned principles to



the facts of the present case, it is apparent that PW1/victim was examined before the Trial Court on 05.02.2024 and was thereafter extensively cross-examined by the defence. Despite this, the petitioner/accused filed an application under Section 311 of Cr.P.C. seeking recall and re-examination of PW1. Notably, the petitioner/accused has failed to specify any concrete basis or factual grounds justifying the necessity for recalling the witness. Moreover, the application does not indicate the specific points on which the witness is proposed to be questioned, nor does it disclose the nature of the questions intended to be asked.

The sole premise for filing the said application appears to be the earlier application moved by the father of PW1 which alleged that the statements made by PW1 were given under political pressure, however, not a shred of evidence or any credible material has been adduced to substantiate this allegation. In the absence of any credible foundation or substantiation, the Trial Court has rightly rejected the petitioner/accused's application



as wholly baseless.

15. There must exist tangible and cogent reasons for summoning a witness again for re-examination or cross-examination. The applicant is required to demonstrate the necessity of recalling the witness to ensure a fair trial. The recall of a witness is not to be permitted as a matter of course, rather the discretion conferred upon the court must be exercised judiciously to prevent miscarriage of justice and not arbitrarily.

16. The power vested under Section 311 of Cr.P.C. should be invoked by the Court solely to meet the ends of justice. Such powers must be exercised for strong and valid reasons and with great caution and circumspection. It cannot be exercised at the mere whims and fancies of the accused. Having said so, this Court is of the considered opinion that the petitioner/accused has failed to establish sufficient grounds to justify the recall of PW1/victim.

17. Insofar as the power under Section 528 of the B.N.S.S. Code is concerned, it is well settled that



although the provision confers wide discretion upon the Court but such power is to be exercised sparingly and with due caution. Its primary object is to prevent abuse of the process of law and to secure the ends of justice.

18. Upon a careful consideration of the facts and circumstances of the present case, this Court finds no error, illegality, or infirmity in the impugned order warranting interference. Accordingly, no grounds are made out for invoking the jurisdiction under Section 528 of the B.N.S.S. Present C-528 petition, being devoid of merit, is hereby dismissed *in limine*.

19. Let a copy of this order be sent to the court concerned for information.

(Vivek Bharti Sharma, J.)
08.05.2025

Akash