



THE HIGH COURT OF UTTARAKHAND AT NAINITAL

Criminal Misc. Application No. 785 of 2022

Naseem Ahmed

... Applicant

Versus

State of Uttarakhand and Another

... Respondents

Presence:-

Mr. Gaurav Singh, learned counsel for the applicant through video conferencing.

Mr. Siddhartha Bisht, learned A.G.A. for the State /

Mr. Rajveer Singh, learned counsel for the respondent no.2 through video conferencing.

Hon'ble Siddhartha Sah, J. (Oral)

By means of the present Criminal Misc. Application filed under Section 482 of the Code of Criminal Procedure, 1973 (in short, "Cr.P.C."), the applicant has sought the following reliefs :-

"i. Quash the impugned order dated 13.05.2022 passed by the learned F.T.S.C./Additional Sessions Judge, Roorkee, District Haridwar in Special Sessions Trial No.10 of 2018 "State vs. Guljar @ Gullu" under Section 363, 366, 376(2)F of I.P.C., and 5 (q)/6 of POCSO Act, Police Station Kotwali Roorkee, District Haridwar.

ii. Summon the Principal, Cant Board Senior Secondary School, Roorkee District Haridwar along with school record of prosecutrix as additional prosecution witness in Special Sessions Trial No.10 of 2018 "State vs. Guljar @ Gullu" under section 363, 366, 376(2)F of I.P.C., and 5 (q)/6 of POCSO Act, Police Station Kotwali Roorkee, District Haridwar pending before Learned F.T.S.C./Additional Sessions Judge, Roorkee, District Haridwar, And/or

iii. Pass any such other further order as this Hon'ble Court may deem fit in the facts and circumstances of the case.



iv. Award the cost to the applicant.”

2. Brief facts necessary for the adjudication of the present Criminal Miscellaneous Application under Section 482 Cr.P.C. are as follows:-

3. An FIR was lodged at the behest of respondent No.2/informant on 25.05.2017 at Police Station Kotwali Roorkee, District Haridwar, under Section 363 read with 366A of the Indian Penal Code, 1860 (in short, "IPC"), registered as Case Crime No. 324 of 2017 with the allegations that the daughter of the present applicant, a student of Class 9 having a date of birth of 25.01.2004, went to her school on 23.05.2017 at about 8:00 a.m.. In the evening, when the present applicant came to know that his daughter had not returned home, efforts were made to search for her, but she could not be found. Thereafter, he was informed by Musteem and Noor Alam that yesterday they had seen the accused person along with another bringing his daughter away on a motorcycle.

4. During the course of investigation, the statements of the victim were recorded under Section 161 Cr.P.C., wherein, she has stated her age to be 13 years. During the investigation, the applicant handed over the mark sheet of Class 8 of the victim, issued by Cantt Board Senior Secondary School, Roorkee, to the Investigating Officer. As per the mark sheet, the date of birth of the prosecutrix was 25.01.2004. The Investigating Officer mentioned the details of the mark sheet in the Case Diary.

5. In spite of receiving the mark sheet showing the date of birth of the victim, the Investigating Officer



did not conduct an investigation on it, nor was the statement of the concerned authority of the school recorded for proving the age of the prosecutrix, nor was he made a witness in the charge-sheet.

6. After completion of the investigation, the charge-sheet was filed. After the framing of charges, the trial commenced, and during the course of the trial, the statement of the informant was recorded as PW1, and the statement of the victim were recorded as PW3. In their statements, both of them deposed that the date of birth of the prosecutrix is 25.01.2004. The prosecutrix, in her statement, further stated that she studied in Cantt Board Senior Secondary School, Roorkee, from Class 1 to Class 9. The statements of PW1 and PW3 have been annexed as Annexure No. 3 to the present application.

7. After completion of the prosecution evidence, the statement of the accused person was recorded under Section 313 Cr.P.C., and thereafter the case was listed for defence evidence. Subsequently, the case was fixed for final arguments.

8. During the preparation of the case, the counsel for the present applicant was informed that the mark sheet of the prosecutrix could not be proved during the trial because, during the investigation, the Investigating Officer did not record the statement of the Principal of the school, nor was anyone on behalf of the school made a witness in the charge-sheet. The witnesses were called in a routine manner on the basis of the list of witnesses given in the charge-sheet, and due to such omission, the proving of the date of birth of the prosecutrix remained overlooked.



9. Thereupon, an application was presented by the prosecution, bearing Paper No. 123-Ga, under Section 311 Cr.P.C., stating therein that the mark sheet of the victim of Class 8, issued by Cantt Board Senior Secondary School, is on record, and the Principal of Cantt Board Senior Secondary School is a material witness for the case, whose evidence is essential for a just decision of the case; as such, he may be summoned as an additional witness.

10. The learned Trial Court, vide order dated 13.05.2022, rejected the application under Section 311 Cr.P.C. on the ground that the Investigating Officer did not conduct any investigation in the school of the victim and that the Principal of the school was not made a witness in the charge-sheet. It was further observed that a period of three years and six months was given for producing prosecution witnesses, but no application for summoning the Principal of the school was given by the prosecution. It was also observed that the case is at its fag end, and as such, the application at such a belated stage is not tenable.

11. Assailing the impugned order dated 13.05.2022, learned counsel for the applicant would submit that the informant (the applicant herein) as well as the victim, in their respective statements as PW1 and PW3, have mentioned the age of the victim as 25th January, 2004. Since the trial was being conducted by the learned ADGC, they were not concerned with this document, which was essential. The learned ADGC presented the application under Section 311 Cr.P.C. for summoning the Principal as an additional witness to prove the age of the victim.



12. Learned counsel for the applicant would submit that the prosecution was careless in not filing the said application at an earlier stage. He would further submit that in a trial, the best evidence ought to be adduced for the adjudication of the controversy before the Court. In the present case, the age of the victim is essential for a just and proper decision of the case.

13. On the aspect of delay, learned counsel for the applicant would submit that the delay aspect can only be considered if a party is trying to fill up a lacuna. He would submit that the evidence regarding the age is already there, since PW1 and PW3 have already stated the age of the victim. He would further submit that the provision of Section 311 Cr.P.C. is couched in very wide language, and a reading of the said section reveals that power is given to a Criminal Court to invoke the provisions of Section 311 Cr.P.C. even before the pronouncement of judgment.

14. Per contra, Mr. Rajveer Singh, learned counsel for the respondent no. 2 opposed the Criminal Miscellaneous Application and contended that the Investigating Officer, after completion of the investigation and after filing of the charge-sheet, had taken cognizance in the matter. It is the duty of the prosecution to provide the entire documents to the accused as per the provisions of Section 207 Cr.P.C. After the documents are provided, charges are framed, and then evidence commences. The stage at which the application under Section 311 Cr.P.C. was filed is a very belated stage. In fact, the prosecution, after adducing their evidence, had given in writing that they do not want to produce further evidence, and therefore, prosecution evidence was closed.



Thereafter, statements under Section 313 Cr.P.C. were recorded.

15. He would further submit that the school Principal was not named as a witness in the charge-sheet. The particular documents were not made available under Section 207 Cr.P.C., and the case was at the stage of final arguments, hence it was a very belated stage. After statements were recorded under Section 313 Cr.P.C., there is absolutely no rhyme or reason why the application under Section 311 Cr.P.C. should be allowed.

16. He relied upon the judgment of the Hon'ble Supreme Court in the case of **Maheshwar Tigga v. State of Jharkhand, reported in (2020) 10 SCC 108**. However, learned counsel for respondent no. 2 was not able to point out as to how that judgment pertains to Section 311 Cr.P.C., as the said judgment deals with the aspect of Section 313 Cr.P.C.

17. Learned counsel for respondent no. 2 further submitted that there is no procedure for allowing an application under Section 311 Cr.P.C. after the closure of evidence. He would submit that despite three years and six months' time, the prosecution did not produce application for summoning the Principal of the school. He relied upon Section 207 Cr.P.C., which is extracted hereunder for ready reference:-

“207. Supply to the accused of copy of police report and other documents. - In any case where the proceeding has been instituted on a police report, the Magistrate shall without delay furnish to the accused, free of cost, a copy of each of the following :-

- (i) the police report;



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(ii) the first information report recorded under section 154; (iii) the statements recorded under sub-section (3) of section 161 of all persons whom the prosecution proposes to examine as its witnesses, excluding therefrom any part in regard to which a request for such exclusion has been made by the police officer under sub-section (6) of section 173;

(iv) the confessions and statements, if any, recorded under section 164;

(v) any other document or relevant extract thereof forwarded to the Magistrate with the police report under sub-section (5) of section 173:

Provided that the Magistrate may, after perusing any such part of a statement as is referred to in clause (iii) and considering the reasons given by the police officer for the request, direct that a copy of that part of the statement or of such portion thereof as the Magistrate thinks proper, shall be furnished to the accused: Provided further that if the Magistrate is satisfied that any document referred to in clause (v) is voluminous, he shall, instead of furnishing the accused with a copy thereof, direct that he will only be allowed to inspect it either personally or through pleader in Court.”

18. He would further submit that the Principal would be a prosecution witness, has not been informed to the accused, hence, he cannot be produced as a witness.

19. Mr. Siddhartha Bisht, learned A.G.A. for the State would submit that the Legislature has couched Section 311 Cr.P.C. in very wide terms. He would submit that any relevant evidence can be adduced by virtue of the provisions of Section 311 Cr.P.C. The provisions of Section 311 Cr.P.C. are meant to be liberal, and any evidence can be adduced for a just and proper decision of the case. He would further submit that the father was examined as PW1, and both he and the victim declared the age of the victim. However, both witnesses could not



prove the age certificate, which could only be proved by the Principal. Thus, no harm would be caused if the Principal is called as a witness to prove the age-related documents.

20. In rejoinder to the submissions made on behalf of learned counsel for respondent no. 2, learned counsel for the applicant would submit that the submissions made on behalf of respondent no. 2 are rather misconceived with reference to Section 207 Cr.P.C. He would submit that after the prosecution provides copies to the accused under Section 207 Cr.P.C., the prosecution is not estopped from producing any further document during the course of the trial and other documents can also be produced on record.

21. He would further submit that the second part of Section 311 Cr.P.C. is mandatory in nature, and if it appears to the Court that any evidence is required for a just and proper decision of the case, it can invoke its powers under Section 311 Cr.P.C. for the ends of justice. He would further submit that after the Principal is examined as a witness, the accused will have a right to cross-examine the said witness and to rebut any evidence adduced on his behalf. He would thus pray that the Criminal Miscellaneous Application be allowed.

22. He also relied upon a judgment rendered in **Criminal Revision No. 114 of 2019, Kaushik Bisht v. State of Uttarakhand** and particularly paragraphs 10, 12, and 13 thereof and submitted that Section 311 Cr.P.C. equips the Court with sufficient power to summon witnesses necessary for determining the question pending consideration before it. Paragraph nos.



10, 12 and 13 are extracted hereunder for ready reference :-

10. There is another reason, why this Court is hesitant to interfere in a challenge given to the impugned order as passed by the Court on 21st January, 2019, is that the basic purpose and intention as per the language used under Section 311 of the Cr.P.C. is to equip the Court with sufficient power to summon the witnesses, which according to the opinion of the Court under given circumstances of each case are necessary for the purposes of examination in order to enable and equip the Court to analytically determine the question which is pending consideration before it and no such impediment in the manner, in which, it has been sought to be raised by the accused revisionist while questioning the order dated 21st January, 2019, would be available to him to argue as its determination is an exclusive prerogative of the Trial Court to conclude as to whether at all the persons sought to be summoned by the prosecution is or are necessary for the purposes of the rightful adjudication of the matter and justifiable settlement of the case.

12. This Court is not in agreement with the argument which has been extended by the learned counsel for the revisionist for the reason that at the stage when the Court is under consideration of the application under Section 311 Cr.P.C. and considering the justification of summoning the witnesses at the stage when Court decides to summon a witness under Section 311 Cr.P.C., it cannot be a stage where a revisionist can have an argument that the prosecution intended to fill in lacunae of the trial, which was pending consideration before the Court. The said argument could have only been extended only after the witnesses are summoned under Section 311 of the Cr.P.C., its only when they are examined by the Court and after recording of their statement and their cross examination what implication will it carry on the trial, it is at that stage, at which, the accused person can have a say while challenging the final order, that the statement thus recorded by the witnesses who are summoned under Section 311 of the Cr.P.C. was for the purposes to fill in the



lacunae of evidence, which has occurred in conduct of trial.

13. For the reasons aforesaid and after considering the reasons which has been assigned by the learned Sessions Court while allowing the application under Section 311 of the Cr.P.C., this Court is of the view that the impugned order does not suffer from any apparent error of mistake but rather it goes to meet the spirit and purposes of Section 311 of the Cr.P.C. for a proper and effective adjudication of trial.

23. In this regard, reference is also made to a judgment of the High Court of Judicature for Rajasthan Bench at Jaipur in the case of **S.B. Criminal Miscellaneous (Petition) No. 5961 of 2024, Chetan Mali v. State of Rajasthan & Anr.**, where the High Court quashed the order passed by the Special Judge, POCSO, rejecting an application under Section 311 Cr.P.C. The relevant paragraphs of the said judgment are quoted hereunder for ready reference :-

“14. The purpose of Section 311 Cr.P.C. is not to favour or disfavour the prosecution or the accused, but naturally elicit and unfold the truth in order to exercise just decision in a case.

15. In the considered opinion of this Court, the instant case pertains to the alleged offence committed with a minor, so in order to bring the correct facts with regard to the actual date of birth of the prosecutrix, it is essential to summon prosecutrix's school record from Upper Primary Aadarsh Vidhya Mandir, Chhan pertaining to her admission in Class-I.

16. Considering the above, the instant criminal misc. petition stands allowed. The impugned order dated 29.07.2024 passed by Special Judge, POSCO Act, 2012, Sawai Madhopur stands quashed and set-aside. The Trial Court is directed to summon the Principal Chiranjilal S/o Kaduram Upper Primary Aadarsh Vidhya Mandir, Chhan i.e. along-with the prosecutrix's Class-I school record.



17. The Trial Court is directed to make all possible endeavours for summoning the aforesaid record and witness and also record his statements expeditiously, as early as possible. The Trial Court is further directed not to entertain any unnecessary or unwarranted request made by either side to defer the matter from one date to another and make all possible endeavours to conclude the trial expeditiously, as early as possible.”

24. After hearing learned counsel for the parties, and going through the record, and considering the case law cited, it is evident that PW1 and PW3, in their testimonies before the Court, specifically stated the age of the victim. During the investigation, a document was provided to the I.O., but due to a lapse on the part of the prosecution, the Principal was not produced to prove the age of the victim.

25. Section 311 Cr.P.C. is couched in very wide terms. The powers under Section 311 Cr.P.C. can be exercised if the evidence appears to the Court to be essential to the just decision of the case. In the present case, the Trial Court rejected the application under Section 311 Cr.P.C. on erroneous grounds of delay and other factors. The age of the victim is a crucial factor going to the root of the matter, without which the prosecution case cannot be justly decided.

26. In such view of the matter, and considering the settled law, particularly in the case of **Chetan Mali** (supra), the facts of which are quite similar to the present case, it is a fit case where the Criminal Miscellaneous Application under Section 482 Cr.P.C. deserves to be allowed.

27. Accordingly, the order dated 13.05.2022, passed by learned F.T.S.C. / Additional Sessions Judge,



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Roorkee, District Haridwar in Special Sessions Trial No.10 of 2018, State Vs. Guljar alias Gulla, is set aside, and the application under Section 311 Cr.P.C. stands allowed.

28. The concerned Court is directed to proceed in accordance with law.

29. Pending application(s), if any, stands disposed of accordingly.

(Siddhartha Sah, J.)

07.08.2026

Shiv/