

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CRM-M-10211-2018

Date of decision: 12.09.2018

Raju

...Petitioner

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MS. JUSTICE JAISHREE THAKUR

Present: Mr. Aditya Yadav, Advocate,
for the petitioner.

Ms. Gaganpreet Kaur, AAG, Haryana.

JAISHREE THAKUR, J.

1. This is a petition that has been filed under Section 482 Cr.P.C. for setting aside the order dated 16.02.2018 (Annexure P-1) passed by the Addl. Sessions Judge, Gurugram in case FIR No. 104 dated 03.02.2017 under Sections 363 & 366-A of IPC and Section 6 of POCSO Act, registered at Police Station City Gurugram, whereby the application filed by the petitioner under Section 311 Cr.P.C. has been dismissed.

2. In a nutshell the facts are, that the petitioner got FIR No. 104 dated 03.02.2017 under Sections 363 & 366-A of IPC and Section 6 of POCSO Act, registered at Police Station City Gurugram. In the said FIR it was submitted that prosecutrix his daughter aged 16 years had gone for coaching and had not returned. The prosecutrix came back to the police

station after 3 days and made a statement against the petitioner accusing him of repeatedly sexually assaulting her.

3. It is argued that the prosecutrix ran away to her maternal grandmother's house in Uttar Pradesh without informing her parents as she was mentally disturbed due to the ongoing altercations between her mother and her step father (petitioner herein). Further it is submitted that as the maternal grandmother was unhappy with the marriage of her daughter with the petitioner, she influenced the prosecutrix to make a statement.

4. During trial the evidence of the prosecution was recorded and thereafter an application was filed on behalf of the petitioner-accused under Section 311 Cr.P.C. for recalling PW-1, the prosecutrix. The said application was dismissed.

5. Learned counsel appearing on behalf of the petitioner herein argues that the Court has inherent powers to recall a witness for cross-examination at any stage of the case. He further submits that the aim of the Court is to discover the truth of the allegations as set out. Section 311 Cr.P.C. is one of the provisions of the Code which allows a Court *to summon a material witness, or examine any person at any stage any inquiry, trial or other proceedings, if appears to the Court that his evidence would be essential for the just decision of the case.* The Court is also competent to exercise to such powers suo motu even if no such application has been filed. The only rider in exercising this power by the Court would be that there must be satisfaction that examination of such a witness is essential in order to arrive at a just decision. He also places reliance in this regard on a catena of judgments reported as *State of*

Haryana Vs Ram Mehar and Others, 2016(4) R.C.R (Criminal) 154,P. Chhaganlal Daga vs. M.Sanjay Shaw, 2004 SCC (Cri) 183, Mannan Sk & Ors. Vs. State of West Bengal &Anr. 2014(4) Recent Apex Judgments (R.A.J.)231, 2003(3) R.C.R. (Criminal) 631 and Baba Kashmira Singh vs. Mahindra & Mahindra Financial Services Ltd. 2014(1) DCR 456. In the case of *Ram Mehar and Others (supra)* the Supreme Court while dealing with the issue of recalling a witness under section 311 Cr.P.C dealt with the term ‘Fair trial’ and observed that ‘Fair trial’ was is a sine qua non of [Article 21](#) of the Constitution of India.

6. I have heard learned counsel for the petitioner and have also perused the pleadings of the case.

7. Section 311 Cr.P.C. reads as under :-

“311. Power to summon material witness, or examine person present.---Any Court may, at any stage of any inquiry, trial or other proceedings 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.”

8. The prosecutrix aged 16 years has categorically deposed before the Addl. Sessions Judge, Gurugram on 31.05.2017 and the petitioner herein was given ample opportunity to cross-examine the prosecutrix. A perusal of the same would reflect that the cross-examination is fairly detailed. The mother of the prosecutrix, namely Mamta was examined as PW-6 and she was declared hostile by the Addl. Sessions Judge, Gurugram on 12.09.2017.

Her statement Ex.P-21 was, however, read over to her in which she had stated that when her daughter Ambika returned back, she disclosed that in her absence, Raju, the petitioner herein committed rape upon her on several occasions and that she became pregnant on that account and he used to criminally intimidate her with dire consequences if she revealed anything to anybody. Even the grand-mother, namely Nirmala who appeared as PW-5 was declared as hostile. Even though a similar statement was there available on record Ex. P-20.

9. Learned counsel appearing on behalf of the petitioner contends that he has been falsely implicated in the said case as would be evident from the statements that have been given by the prosecution witnesses. It is also argued that on 07.02.2018 a meeting of the family was held and it was resolved to move an application for release of Raju on bail or acquittal in the eyes of law since no such occurrence had taken place and prosecutrix had made a wrong statement before the authorities. Learned counsel for the petitioner seeks to recall the prosecutrix and confront her with the said family resolution dated 07.02.2018.

10. I have heard learned counsel for the petitioner and have also perused the order declining the application under Section 311 Cr.P.C. recalling of the prosecutrix. Addl. Sessions Judge, Gurugram perused the statement of PW-1 under Section 164 Cr.P.C. as well as the statement that had been given before the Court (in camera proceedings) and found that the statement was on identical lines. It was also noted that she had been cross-examined on length. By the impugned order the Addl. Sessions Judge noted that merely because a few witnesses had turned hostile, it would not give a

right to the petitioner accused to recall and re-examine a witness.

11. The impugned order does not suffer from any infirmity. No doubt a witness can be recalled at any stage of the trial but no new additional factor has come into play. The family resolution would have no bearing in the eyes of law since the case has to be decided on the strength of its own legs and the evidence available before the Court.

12. In view of the above, there is no merit in the instant petition and the same is dismissed.

12.09.2018

Satyawan

Whether speaking/reasoned

Whether reportable

(JAISHREE THAKUR)

JUDGE

Yes.

No.