

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

**CRR-4364-2017 (O&M)
Date of Decision:25.07.2018**

State of Haryana

... Petitioner

Vs.

Pawan

... Respondent

CORAM : HON'BLE MR. JUSTICE P.B. BAJANTHRI

Present : Mr. Munish Sharma, A.A.G. Haryana.
Mr. Ajit Singh Lamba, Advocate
for the respondent.

P.B. BAJANTHRI J. (Oral)

In the instant petition, petitioner has challenged order dated 23.08.2017 passed by the Sessions Court by which petitioner's application filed under Section 311 Cr.P.C for adducing additional evidence has been rejected.

2. An FIR No.332 was filed against the respondent for the offences under Sections 323, 302, 34 IPC on 25.8.2013 at Police Station Sadar, Hansi.

3. Learned counsel for the petitioner-State submitted that dismissal of the application filed under Section 311 Cr.P.C by the Court is incorrect for the reasons that respondent was involved in another FIR namely FIR No.105 dated 26.8.2013 for the offences under Sections 376, 452, 506 IPC and Section 6 of POCSO Act, 2012 which was decided on 2.6.2016. The said judgment is relevant in view of the fact that respondent's niece Smt. Renu was the complainant in that case. It was further contended that no prejudice would cause to the respondent if the judgment dated 2.6.2016 is taken into consideration so also documents which are stated in para-3 of the order. It is further contended that even though respondent's contention that as per Section 42 to 44 of the Evidence Act, judgment cannot be taken into consideration as it is not admissible. However, the

same has not been considered by the trial Court except stating that it all depends upon facts and circumstances of each case how the evidence are required to be taken into consideration. It is also submitted that Section 74 read 77 of Evidence Act supports his case for the purpose of bringing on record certified copy of the judgment. Thus, Sessions Court has erred in rejecting the application filed under Section 311 Cr.P.C.

4. Per contra, learned counsel for the respondent submitted that application of the petitioner filed under Section 311 Cr.P.C is belated when statement under Section 313 Cr.P.C has been recorded on 18.2.2017. Whereas application under Section 311 Cr.P.C was presented on 31.05.2017. On that score itself, petitioner's application is required to be rejected. It was further contended that Section 43 of the Evidence Act prohibits to rely on judgment in some other case. Even though trial Court while rejecting the application has not considered, however, one of the contention raised by the respondent has been recorded in para-5. In view of these facts and circumstances, petitioner has not made out a case so as to interfere with the order dated 23.8.2017.

5. Heard the learned counsel for the parties.

6. Crux of the matter in the present case is whether petitioner's application filed under Section 311 Cr.P.C for examining following witnesses with record/ (i) Record Keeper of Juvenile Justice Board, Hisar alongwith case file bearing FIR No.105 dated 26.8.2013, under Sections 376, 452, 506 IPC and 6 of POCSO Act, 2012, P.S. Kalayat decided on 2.6.2016. (ii) Jai Bhagwan ASI/131/H, who registered Zero FIR at PS Sadar Hansi on the application of the prosecutrix on 25.8.2013. (iii) MHC P.S. Kalayat alongwith original register of FIR No.15 dated 26.8.2013, under

Sections 376, 452, 506 IPC and 6 of POCSO Act, 2012, P.S. Kalayat is permissible or not?

7. Judgment dated 2.6.2016 and certified copy of FIR could be taken into consideration for the purpose of additional evidence on behalf of the State since there is no prohibition in respect of judgment in another case could be taken into consideration for the purpose of deciding another case like the present one. Respondent has not apprise this Court what prejudice would cause to him if the judgment is taken into consideration as documentary evidence. It is further to be noted that Section 42 of Evidence Act is not relating to criminal proceedings. Even though, Sections 42 to 44 of Evidence Act refers to judgments and orders/decrees but at the same time no prejudice has caused to the respondent if the contents of the FIR and judgment is taken into consideration for the purpose of corroborative evidence. Respondent's contention that petitioner's petition is belated is concerned, it is to be noted that in order to render justice in the criminal proceedings, it is necessary to condone the delay, if any.

8. In view of these facts and circumstances, order dated 23.8.2017 is set aside. Petition stands allowed. Trial Court is directed to afford three effective opportunity to produce the witnesses and record. Observations of this Court in respect of production of additional evidence like FIR and judgment and witnesses be in accordance with law. In other words relevance of the aforesaid documents/evidence is left to the trial Court.

25.07.2018
rajeev

(P.B. Bajanthri)
Judge

Whether speaking/reasoned **Yes/No**

Whether reportable **Yes/No**