

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

Criminal Revision No. 352 of 2018 (O&M)

Date of decision : February 01, 2018

Deepak and another

.....Petitioners

Versus

State of Haryana and another

....Respondents

CORAM:- HON'BLE MRS. JUSTICE LISA GILL

Present: Mr. Sanjay Vashisth, Advocate
for the petitioners.

LISA GILL, J.

The petitioners are aggrieved of order dated 02.01.2018 whereby an application under Section 311 Cr.P.C. filed by the prosecution for summoning the concerned Clerk/Record Keeper of Central Board of School Education (CBSE), Delhi for proving the certificate of Secondary School Examination issued by CBSE as well as to examine the father of the victim, has been allowed.

Brief facts necessary for adjudication of this case are that FIR No. 666 dated 06.12.2014 was registered on the basis of a statement of the victim, aged 17 years, to the effect that she was studying in Class IX in the year 2011-2012. Petitioner No. 1, a resident of village Sataur, is her cousin brother being the son of her paternal uncle (*Taya* in relation) and he used to keep visiting their house at Najafgarh. Petitioner No. 1, it is stated, called on telephone and asked whether anyone was there at home. When the complainant informed that she was alone, petitioner No. 1 called her to Dhasa Bus stand at Bhadurgarh on the pretext of going to watch the circus.

The complainant trusted petitioner No. 1 being her cousin and accompanied

him in a bus. Shorn of unnecessary detail, it is stated by the complainant that petitioner No. 1 committed rape upon her and thereafter threatened her not to reveal this incident to anyone otherwise he would not only kill her brother but the complainant as well and throw her in a well. Allegations were raised against the other co-accused as well. Petitioner No. 1 asked the complainant to meet her again and on her refusal threatened to post her obscene photographs on the Internet. It is mentioned that the complainant on the occasion of birth of a son to her uncle proceeded to her uncle's house on 07.09.2014 at village Sataur alongwith her younger sister. On the way to her uncle's house, the petitioners/3-4 boys threatened that her obscene photographs would be posted on the Net if she did not come to them as directed. The complainant stated that she did not reveal this to anyone and went back to Najafgarh. When she came back to her village on 04.12.2014 with her father, she came to know that her obscene photographs had been posted on the Net. Thereafter, the present FIR was lodged. As per the prosecution case, the victim, in this case, was under 18 years of age.

The prosecution sought to examine the concerned Clerk/Record Keeper of the CBSE, Delhi as well as the father of the victim to prove its case vide application under Section 311 Cr.P.C. which was allowed by the learned trial Court vide impugned order dated 02.01.2018.

Learned counsel for the petitioners vehemently argues that by allowing this application, learned trial Court has permitted the prosecution to fill up the lacunae, which were left by it. FIR No. 666 was lodged on 06.12.2014. After presentation of final report under Section 173 Cr.P.C. on 25.02.2015, the first charge sheet was framed on 05.06.2015. An application under Section 319 Cr.P.C. was allowed for summoning additional accused,

in this case, on 21.12.2015. Charges were framed again on 19.07.2016. Prosecutrix, in this case, was examined on 22.09.2016. An application under Section 311 Cr.P.C. was initially filed for examining the Record Keeper of Nav Uday Convent Senior Secondary School, Prem Nagar, Najafgarh, New Delhi for bringing the original record of the prosecutrix regarding her date of birth when she was in 10th standard. This application, it is submitted, was allowed by the learned trial Court on 05.09.2017 (Annexure P-5), despite opposition by the petitioners. Thereafter, on examination of PW16, Physical Education teacher of Nav Uday Convent Senior Secondary School (Annexure P-6), an application was moved by the prosecution under Section 311 Cr.P.C. (subject matter of the present petition) seeking permission to examine concerned Clerk/Record Keeper of CBSE, Delhi.

Learned counsel for the petitioners vehemently argues that the exercise of determining the age of the prosecutrix should have been carried out even prior to the framing of the charge and it is only after certain discrepancies appeared in the evidence of PW16 that the present application has been moved. It is a clear cut case of filling up of lacunae causing grave prejudice to the petitioners. It is, thus, prayed that this petition be allowed.

Heard, learned counsel for the petitioners.

Having considered the entire facts and circumstances of the case, I do not find any merit in the argument raised by learned counsel for the petitioners.

Section 311 Cr.P.C. read 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.”

There is no impediment on the power of the learned trial Court to examine a witness at any stage of the trial for the just and proper adjudication of the case. Thus, argument of learned counsel for the petitioners that this application should not have been allowed, at this stage, is indeed fallacious, untenable, hence rejected.

In the present case, determination of the age of the victim is indeed vital. It cannot be said that by allowing application under Section 311 Cr.P.C., the prosecution has been permitted to fill up lacunae thereby causing grave prejudice to the petitioners.

Learned counsel for the petitioners is unable to point out any infirmity, illegality or perversity in the impugned order dated 02.01.2018, which calls for interference by this Court in exercise of its revisional jurisdiction.

Accordingly, this revision petition is dismissed.

February 01, 2018
rts

(Lisa Gill)
Judge

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No