

202.

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

CRR-2724-2019

Date of decision: 18.12.2019

RESHMA @ SAKINA

... Petitioner

versus

STATE OF HARYANA

.... Respondent

CORAM: HON'BLE MR. JUSTICE HARI PAL VERMA

Present: Mr. Birinder Singh Khehar, Advocate,
for the petitioner.

Ms. Priyanka Sadar, AAG, Haryana.

HARI PAL VERMA, J.(Oral)

The petitioner-complainant has filed the present revision petition impugning the order dated 20.09.2019 passed by the learned Additional Sessions Judge (Exclusive Court for heinous crimes against Women and Children), Yamuna Nagar at Jagadhri, whereby the application filed by the petitioner under Section 311 Cr.P.C. for her re-examination was dismissed.

The petitioner-complainant was examined in the case as PW1 on 01.05.2018 and thereafter, she moved an application under Section 311 Cr.P.C. so as to get herself re-examine, as she could not bring out all the facts on record before the Court during the course of her examination.

Counsel for the petitioner has argued that in order to bring out the complete facts, the petitioner made a limited prayer for her re-examination and as per Section 311 Cr.P.C., the Court has ample powers to

recall or re-examine any witness, even if the said witness has already been examined so as to meet the ends of justice. He refers to the judgment of this Court passed in ***CRM-M-35197-2018*** titled as ***Akash Verma and another Versus State of Haryana and other, decided on 15.11.2018***, to contend that it is an onerous duty cast upon the courts to ensure fair trial and to arrive at the truth. Paras 19 to 21 of said judgment read as under:-

“19. An onerous duty that has been cast upon the courts is to ensure fair trial and to arrive at the truth. All the judgments as cited above, clearly delineate that there is no limit on discretion of court to recall and reexamined witness, even if the witness who deposed one way before the court now wants to depose and is prepared to give evidence which is clearly different from what had been stated earlier. Allowing witnesses to be recalled would be in consonance with the cardinal principle that the truth must prevail. To ensure fair trial, the court can consider the request and allow such witness to be called for re-examination. The second part of Section 311 of the Code also clearly states that the Court 'shall' summon and examine or recall and re-examine any such person if his evidence appears to it to be essential for the just decision of the case. The court has to be satisfied that such application is not a frivolous or vexatious application, only to delay the trial or fill up any lacunas in the trial.

20. As far as the question regarding the maintainability of the application filed by the complainant is concerned, Section 225 of the Code clearly specifies that it is the Public Prosecutor who is to conduct the trial Court of Session. However, in given facts and circumstances of the instant case, when the Public Prosecutor himself continued to cross examine the witnesses even after they had turned hostile and did not support the statement given under Section 164 of the Code in order to elicit the truth; and also did not raise any objection to application

under Section 311 of the Code as filed by the complainant itself raising the question of maintainability, it can be safely assumed that the said application had the concurrence of the Public Prosecutor. Even in the court today the State counsel submits that in order to arrive at the truth and to ensure a fair trial, he has no objection to the application being allowed.

*21. Once the court is of the opinion that to ensure fair trial, an application is to be allowed in order to elicit the truth, then it should not be bound down by technicalities. The accused in the instant case will have all opportunities to cross-examine the complainant and her parents. In the peculiar circumstances of the instant case, setting aside the impugned order and remanding the case back to the Sessions Court, to over come this technicality for the Public Prosecutor to file an application under Section 311 of the Code, would not serve any fruitful purpose and would rather only delay the proceedings. This is particularly in view of the statement given that there was deemed acceptance of the Public Prosecutor to the application filed. A note is also taken of the fact that the Public Prosecutor did not challenge the impugned order. As has been held in **Khushwinder Singh, Khatta Singh and Zahira Habibulla H. Sheikh's cases (supra)** technicalities should not stand in the way of determining the truth, nor should an attempt to thwart a fair trial be countenanced.”*

Learned State counsel has argued that the petitioner has already been examined in the case and during her examination-in-chief, she had enough opportunity to state her version. Nothing has come on record as what impel the complainant to depose further in the case. Moreover, the application (Annexure P-3) dated 04.09.2019 has not been filed by the Public Prosecutor and as provided under Section 225 Cr.P.C., such application can be filed only by the Public Prosecutor. Since the present

application has not been filed by the Public Prosecutor, the petitioner is not entitled to move such application.

I have heard counsel for the parties.

Section 311 Cr.P.C. is empowered to summon material witness or examine any person including to recall or re-examine any person already examined. The said Section 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 proceeding 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.”

The judgment cited by the counsel for the petitioner in **Akash Verma's case (supra)** provides that there is no limit on discretion of court to recall and re-examine witness, even if the witness who deposed one way before the court now wants to depose and is prepared to give evidence which is clearly different from what had been stated earlier. Therefore, this Court in the said case has allowed recalling of witness in consonance with the cardinal principle that truth must prevail.

In view of the above and in order to have a fair trial in the case, this Court finds that the petitioner-complainant deserves one opportunity to re-examine herself in the case.

Accordingly, the present petition is allowed, order dated 20.09.2019 passed by learned Additional Sessions Judge (Exclusive Court for heinous crimes against Women and Children), Yamuna Nagar at

Jagadhri, vide which the application filed by the petitioner under Section 311 Cr.P.C. for her re-examination was dismissed, is set aside and petitioner-complainant is granted one opportunity to re-examine herself in the case.

Merely because the petitioner is being allowed to re-examine in the case is not going to prejudice the interest of the accused.

However, the observations made hereinabove shall not be construed as an expression of opinion on the merits of the case and the trial Court shall decide the case on the basis of available material.

(HARI PAL VERMA)
JUDGE

18.12.2019
sanjeev

Whether speaking/reasoned?	Yes/No
Whether reportable?	Yes/No