

IN THE HIGH COURT OF PUNJAB AND HARYANA

AT CHANDIGARH

Criminal Revision No.3261 of 2019

Date of Decision: 05.12.2019

Ram Chander

...Petitioner (s)

Versus

State of Haryana

...Respondent(s)

CORAM:- HON'BLE MR. JUSTICE HARI PAL VERMA

Present:- Mr. Mohit Rathee, Advocate
for the petitioner.

HARI PAL VERMA, J. (Oral)

The petitioner – Ram Chander has filed the present revision petition against the order dated 09.10.2019 passed by learned Additional Sessions Judge, Gurgaon, whereby his application under Section 311 CrPC, seeking recall of witnesses PW-1 victim girl and PW-2 the complainant, for their further cross-examination, was dismissed.

Briefly stated, FIR No.177 dated 14.09.2017 under Section 6 of the POCSO Act with P.S. Industrial Sector 7, Manesar was registered against the petitioner. The victim was already examined as PW-1 whereas the complainant was examined as PW-2. But thereafter, the petitioner-accused has filed an application seeking recall of these witnesses i.e. PW-1 and PW-2 for their further cross-examination. The pleaded grounds on

which the recall of aforesaid witnesses was sought, for further cross-examination, are that these witnesses were cross-examined by Mr. Lokesh Yadav, Advocate, but since Mr. Lokesh Yadav, Advocate was a junior counsel, he could not examine these witnesses from every angle and some important material questions as well as contradictions and improvements in the statement of these material witnesses could not be put to them during their cross-examination. Therefore, the necessity to recall these witnesses for further cross-examination has arisen.

Learned counsel for the petitioner has submitted that in fact, PW-2 is the Chairperson of the School Management Committee and she wanted to appoint someone in her relations at the place of the petitioner. Inadvertently, these witnesses were not cross-examined from this angle effectively by the conducting counsel. Moreover, no question regarding other children, who were playing with the alleged victim girl, was put to them. In case they are allowed to be cross-examined again, no prejudice is going to be caused to the prosecution, whereas if they are allowed to be cross-examined, it would bring the true facts before this Court. He has referred to judgment of Delhi High Court in CRM No.725 of 2015 and CrI.M.-2765-MA-2015 **Shiv Kumar Yadav Vs. State,** to contend that a conspicuous reading of Section 311 CrPC would show that widest powers have been invested with the Courts when it comes to the question of summoning of witnesses or to recall or re-examine a witness already examined. He has also referred to the judgment of the Apex Court in the case of **Rajaram Prasad Yadav Vs. State of Bihar & anr. 2013(14) SCC 461** to contend that the object of Section 311 CrPC is that there may not be

failure of justice on account of mistake of either of the parties in bringing a valuable evidence on record or leaving ambiguity in the statements of the witnesses examined from either side. He has referred to paragraph 14 of the said judgment, which reads as under:-

“14. A conspicuous reading of Section 311 Cr.P.C. would show that widest of the powers have been invested with the Courts when it comes to the question of summoning a witness or to recall or re-examine any witness already examined. A reading of the provision shows that the expression “any” has been used as a pre-fix to “court”, “inquiry”, “trial”, “other proceeding”, “person as a witness”, “person in attendance though not summoned as a witness”, and “person already examined”. By using the said expression “any” as a pre-fix to the various expressions mentioned above, it is ultimately stated that all that was required to be satisfied by the Court was only in relation to such evidence that appears to the Court to be essential for the just decision of the case. Section 138 of the Evidence Act, prescribed the order of examination of a witness in the Court. Order of re-examination is also prescribed calling for such a witness so desired for such re-examination. Therefore, a reading of Section 311 Cr.P.C. and Section 138 Evidence Act, insofar as it comes to the question of a criminal trial, the order of re-examination at the desire of any person under Section 138, will have to necessarily be in consonance with the prescription contained in Section 311 Cr.P.C. It is, therefore, imperative that the invocation of Section 311 Cr.P.C. and its application in a particular case can be ordered by the Court, only by bearing in mind the object and purport of the said provision, namely, for achieving a just decision of the case as noted by us earlier. The power vested under the said provision is made available to any Court at any stage in any inquiry or trial or other proceeding

initiated under the Code for the purpose of summoning any person as a witness or for examining any person in attendance, even though not summoned as witness or to recall or re-examine any person already examined. Insofar as recalling and re-examination of any person already examined, the Court must necessarily consider and ensure that such recall and re-examination of any person, appears in the view of the Court to be essential for the just decision of the case. Therefore, the paramount requirement is just decision and for that purpose the essentiality of a person to be recalled and re-examined has to be ascertained. To put it differently, while such a widest power is invested with the Court, it is needless to state that exercise of such power should be made judicially and also with extreme care and caution.”

Further reference has been made to judgment in the case of **Hoffman Andreas v. Inspector of Customs, Amritsar (2000) 10 SCC 430** to contend that grant of fairest opportunity to the accused to prove his innocence is the object of every fair trial.

I have heard learned counsel for the petitioner and perused the impugned order.

Section 311 CrPC 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.”

A bare read of Section 311 shows that the Court enjoys vast power to summon/re-examine or recall a witness at any stage of proceedings, but such power is to be used sparingly and cautiously and cannot be exercised to permit the applicant to fill up lacuna.

The petitioner is a teacher and the victim is none else but his own student. The allegations against the petitioner are that on 13.09.2017, during school time, the petitioner inserted his tongue in the mouth of the victim, who was about 9 years of age. He also inserted his finger in her private part (vagina). During investigation, the victim girl was produced before the Magistrate so as to get her statement recorded under Section 164 CrPC, in which, she disclosed that her class teacher has put his tongue in her mouth in the school and also put his finger in her vagina. The medical of the victim was got conducted. During interrogation of the accused, he has admitted his involvement in the crime. The petitioner-accused was also given right to cross-examine the witnesses PW-1 and PW-2, who were duly cross-examined by the defence. It is after about 1½ year, the present application has been filed by the petitioner for further cross-examination of theses witnesses, who were already examined as PW-1 and PW-2. In this manner, no other inference can be drawn except that the petitioner wants to delay the trial on one pretext or the other.

The pleaded ground that the advocate, who conducted cross-examination at the initial stage, was a junior counsel and hence, inadvertently, he could not cross-examine those witnesses on certain necessary questions, cannot be accepted. No such details of counsel, being junior, has been furnished in the application. The explanation rendered by

counsel for the petitioner for re-cross-examination of witnesses, already cross-examined, is not at all plausible, as change of counsel or his inability to ask material question during cross-examination cannot be a ground to recall a witness for further cross-examination.

So far as the judgments relied upon by counsel for the petitioner are concerned, the same have no relevance to the facts of the present case, as the said judgments refers to the right accrued to the accused to defend his case, which he has duly exercised. In the case in hand, all material witnesses have been examined. Thus, the argument of the counsel for the petitioner that the counsel who conducted cross-examination was a junior counsel, is no ground to grant another opportunity to the petitioner to recall the witnesses already examined in the case.

There is no illegality and infirmity in the impugned order and as such, same deserves to be upheld.

Accordingly, the present revision petition is hereby dismissed.

December 05, 2019
AK

(HARI PAL VERMA)
JUDGE

Whether speaking / reasoned?

Yes / No

Whether reportable?

Yes / No