

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

CRR No.2625 of 2018 (O&M)
Date of Decision: February 26, 2020

Shilpi Chaudhary

...Petitioner

Versus

State of Haryana and another

...Respondents

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present:- Mr. Salil Sabhlok, Advocate
for the petitioner.

Ms. Trishanjali Chopra, AAG Haryana.

Mr. Rakesh Nehra, Advocate
for the accused.

JAISHREE THAKUR, J.

1. The instant criminal revision has been filed seeking to challenge the order dated 30.07.2018 passed by the Addl. Sessions Judge, Jhajjar whereby, the application filed by the petitioner under Section 311 Cr.P.C. for her re-examination has been dismissed.

2. In brief, the facts of the case are that FIR No.548 dated 22.09.2017, under Sections 376, 506, 216 of Indian Penal Code was registered at Police Station Sadar Bahadurgarh on the complaint of the petitioner herein, when her statement was recorded before the trial court on 30.05.2018 in which she turned hostile and did not support the prosecution version. Thereafter, on 09.07.2018, the petitioner moved an application

under Section 311 Cr.P.C. for her re-examination, which application came to be dismissed by the trial court by its detailed order dated 30.07.2018. The said order dated 30.07.2018 has been assailed by the petitioner in the instant criminal revision.

3. Notice of motion was issued in the matter, pursuant to which appearance has been caused on behalf of the respondent-State as well as accused and a reply was also filed by the accused.

4 Mr. Salil Sablok, learned counsel appearing on behalf of the petitioner would contend that soon after the framing of the charges by the trial court on 20.02.2018, some persons who are related to the accused, had on gun point given a threat to the petitioner telling her to resign from her initial statement and give a statement in favour of the accused. It is submitted that 24.02.2018 some persons related to the accused had caused an accident with the husband of the petitioner and threatened him that in case, the petitioner would not give evidence in favour of the accused, then he along with his family members will be killed. It is argued that on 30.05.2018, when the petitioner was coming to the court to give her statement along with witness Jitender Dhankhar and his wife in a car, some persons related to the accused followed the car of the petitioner and again threatened her on a gun point to depose in favour of the accused or face dire consequences. It is also contended that a similar threat was given to the petitioner outside the court complex. It is also submitted that family members of the petitioner had also been kidnapped by some persons on gun point from her house on the day, when she had to appear in the court to depose. It is also argued that since the petitioner was under great fear, her deposition was not free, therefore,

she may be permitted to re-examine herself before the trial court. In support of his arguments, learned counsel relied upon judgment rendered in ***Zahira Habibullah Sheikh and others vs. State of Gujarat and others, 2006(2) RCR (Criminal) 448.***

5. Per contra, learned counsel appearing on behalf of the accused would contend that the petitioner herein filed an application 311 Cr.P.C. before the trial court just to extort money from the accused. It is submitted that a bare perusal of the statement of the petitioner before the trial court would make it clear that the same was not given under any fear or threat, in fact, no such demeanor was noticed by the trial court at the time of recording her statement. It is argued that the accused remained in custody from 24.10.2017 to 04.06.2018 i.e. during the period of investigation, framing of charges and deposition of the petitioner on 30.05.2018 and the allegations of threat etc. have been made in the said application under Section 311 Cr.P.C. for the first time after 40 days of giving the evidence by the petitioner, just to extort money. It is contended that conduct of the petitioner by remaining silent for such a long span of time itself speaks volumes. It is also submitted that the husband of the petitioner was present in court on 05.06.2018 i.e. the date for which the case was adjourned from 30.05.2018, but he too never made any such allegations either to the court or to the police. It is also pointed out that there is statement of PW10 Santosh Kumar, Hotel Manager that the petitioner and accused consumed beer and eatables on the day of alleged rape and she never raised any complaint to him and went back without any hesitation. It is also pointed out that as per statement of PW3 Dr. Sangeeta there was no external mark of

the injury on any part of the body of the petitioner .

6. I have heard counsel for the parties and with their able assistance, have gone through the pleadings of the case and the judgments cited.

7. Section 311 Cr.P.C. deals with the power of the court to summon material witness, or examine person present, which 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 touchstone for exercise of powers under Section 311 Cr.P.C. is the satisfaction of the court that evidence of any person which comes to its notice is essential for the just decision of the case. A reading of the said Section would make it clear that it has been divided into two parts, because the word used in the first part is “may” whereas, in the second part the word used is “shall”, thus, the first part gives discretionary power to the court to summon any person or examine any person in attendance or to recall and re-examine any person, whose statement has already been examined and the second part compels the court to take any of the said steps, if the new evidence appears to it to be essential for the just decision of

the case. As such, Section 311 Cr.P.C. does not put an embargo on the court to exercise its power with regard to the stage of the case or the manner in which it should be exercised, however, the power to summon a witness should be exercised judiciously considering the facts and circumstances of the each case. It has to be seen whether it is essential to summon a person for the just decision of the case. In the ultimate analysis, justice is to be done between the parties, which can be ensured by the process of fair trial. The judgment rendered by the Apex Court in ***Rajaram Prasad Yadav vs. State of Bihar and another, 2013(3) RCR (Criminal) 726*** illustrated the detailed principles to be borne in mind while dealing with an application Section 311 Cr.P.C. whereas in the judgment in ***Zahira Habibullah Sheikh's*** case (supra) it has been held that there is a need for protecting witnesses, who turned hostile either due to threat, coercion, pressure and monetary consideration at the instance of those in power.

8. While keeping in mind the aforesaid principles and provision, this court would examine the facts and circumstances of the present case. In the case in hand, the FIR in question was registered by the petitioner-complainant *inter alia* alleging therein that the accused had sex with her without her consent. However, when she appeared in the witness box as PW1 on 30.05.2018, she *inter alia* deposed before the court that the accused had sexual intercourse with her with her consent. A reading of the allegations in the FIR as well as deposition made by the petitioner would reflect that a diametrically opposite stand has been taken, in fact, she turned hostile before the court and did not support the prosecution version. After declaring the petitioner as hostile, a lengthy cross-examination was done by

the Ld. PP, but she did not utter a single word against the accused and rather stated that the police obtained her signatures on blank papers. During her cross-examination by the defence counsel, she categorically deposed that she made statement in the court voluntarily, without any kind of force, threat or coercion from the accused and that she had gone with the accused of her sweet will and she had been talking with the accused number of times.

9. A perusal of the application moved under Section 311 Cr.P.C. (Annexure P/3) would reveal that in the same, the petitioner has alleged that on 02.02.2018 i.e. the date on which charges were framed before the court, some persons related to the accused had given life threat to her on the gun point to give statement in favour of the accused. The petitioner also stated in the application that on 30.05.2018 when she was coming to the court to give her statement along with Jitender Dhankhar and his wife, she was again threatened on the gun point to depose in favour of the accused. She also mentioned that her family members were kidnapped at gun point in her house to depose in favour of the accused. As per the petitioner, due to the aforesaid reasons, she could not depose before the court on 30.05.2019 voluntarily.

10. It is an admitted fact that petitioner never apprized the court or the police agency on 30.05.2018 or prior to that regarding the alleged life threats being received by her or her husband from the persons related to the accused. The application under Section 311 Cr.P.C. was moved by her before the trial court after 40 days from 30.05.2018 i.e. on 09.07.2018, after she deposed before the court. It is also an admitted fact that the accused was

in custody during the said alleged period.

11. A perusal of Annexure R-2 i.e. the cancellation report submitted in FIR No.665 dated 10.07.2018, under Sections 195-A, 341, 506 of IPC and Sections 25/54/59 of Arms Act, registered at Police Station Jhajjar on the complaint of the petitioner herein would reflect that all the allegations levelled by the petitioner regarding getting of life threat on the gun point etc. were found to be false during the course of investigation.

12. Under these peculiar facts and circumstances of the present case, this court does not find any bona fide in the application moved by the petitioner under Section 311 Cr.P.C. for her re-examination by merely alleging that on the earlier occasion she turned hostile under threat, coercion and pressure meted out to her at the instance of the persons related to the accused. In her application under Section 311 Cr.P.C. the petitioner herein alleged that she started receiving threat of life on the gun point from 20.02.2018, the date when charges were framed in this case and that threat in one way or the other continued till her deposition in the court on 30.05.2018, but the grey area which remained unanswered is as to why the petitioner herein maintained silence for such a long period, without informing the same either to the court, police agency or to any other prosecution agency. A detailed investigation was done in FIR No.665 dated 10.07.2018 registered under Sections 195-A, 341, 506 of IPC and Section 25/54/59 of Arms Act at Police Station Jhajjar at her instance and the allegations levelled by her found to be false. This court also cannot lose sight of the fact that the trial court had the opportunity to observe the demeanor of the petitioner, while recording her evidence and the

observation made by the trial court deserve more faith, while considering the legality of the impugned order. The authority relied upon by counsel for the petitioner of the case of ***Zahira Habibullah's case*** (supra) has no application to the facts and circumstances of the case and the same is distinguishable. The trial court has rightly dismissed the said application moved by the petitioner under Section 311 Cr.P.C.

13. In view of the above discussion, there is no merit in the instant criminal revision, which is hereby dismissed. Pending applications, if any, stand disposed of accordingly.

14. Needless to say, anything observed or said by this court hereinabove is only for the purpose of deciding the instant criminal revision and the same shall have no bearing on the merits of the case.

February 26, 2020

vijay saini

(JAISHREE THAKUR)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No