

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

**CRR-52-2021 (O&M)  
Date of decision: 25.01.2021**

**Rajesh Kumar Chauhan**

**...Petitioner**

**Versus**

**State of U.T., Chandigarh**

**...Respondent**

**CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN**

Present:- Mr. Jagan Nath Bhandari, Advocate  
for the petitioner.

Mr. Manish Jain, Advocate  
for the respondent-U.T., Chandigarh.

**ARVIND SINGH SANGWAN, J. (Oral)**

Prayer in this petition is for setting aside the order dated 02.11.2020 passed by the trial Court in case FIR No. 190 dated 27.06.2019, registered under Sections 376-AB, 354A(I) of the IPC and Sections 6 and 8 of the POCSO Act at Police Station Sector 17, Chandigarh, wherein the petitioner is facing trial.

Vide impugned order, the trial Court has declined to recall the minor witness/PW-1/victim, who is aged about 11 years.

Learned counsel for the petitioner submits that the jail authorities has handed over a letter to the brother of the petitioner, which is allegedly written by the victim, in which it is stated that a wrong complaint has been registered against the petitioner on account of some family dispute and an apology is tendered in the letter.

Learned counsel for the petitioner further submits that since this letter has been posted by someone posing herself to be the victim,

giving her mother's name and address, the petitioner be permitted to recall the victim/PW-1 to further cross-examine her by putting the same whether it has been written by her not.

Learned counsel further submits that as per powers of Court under Section 311 Cr.P.C., the Court, at any stage of inquiry, trial or proceedings under it, can summon any person as a witness or recall and re-examine any person, if such evidence appears to be essential for the just decision of the case.

Learned counsel for the petitioner further submits that since this new evidence has come on record by way of a letter, which is addressed to jail authorities in the name of victim/PW-1, the application, seeking recall of PW-1, needs to be allowed to find out the truth.

Learned counsel, appearing for the U.T., Chandigarh, opposes the prayer of the petitioner on the ground that the case is now fixed for defence evidence and the medical evidence proves that it is a case of penetrative sexual assault on the victim.

Learned counsel, appearing for the U.T., Chandigarh, further submits that by way of aforesaid letter, an attempt has been made by the accused to create some evidence and vide impugned order, the trial Court has dismissed the application of the petitioner, filed under Section 311 Cr.P.C., by passing a well reasoned order. The operative part of the impugned order is reproduced below:

“13. The present application has been moved when the case is at the stage of examination of defence witnesses. Vide Jimni order dated 09/03/2020 the case was fixed for examination of defence witnesses, however, meantime due to spread of pandemic

Covid-19 the physical functioning of the courts came to a halt. During this period the alleged letter came into light. The contention of the prosecution that the same was never sent to police or the court carries weight as it is very strange that the minor victim (DOB 5.3.2008) aged 11 years (at the time of making complaint) had complained against the applicant/accused through child helpline team member. Surprisingly, she did not write or contract to child helpline team member and directly posted the alleged letter Annexure A1 to the accused in his name at the address of jail where he was confined. The applicant accused has reproduced in para No.2 of its application some part of cross examination of victim which was put in the form of suggestions to her. The minor victim was examined on 17/09/20189. It is very strange that in the alleged letter the contents are written on the defence line i.e. as admission of suggestions, which was put to her during her cross examination.

14. It is penitent to note that perusal of file reveals that statement of accused under section 313 Cr.P.C. was recorded on 13/12/2019 and the case was posted for 17/12/2019 for filing list of defence witnesses and the same was filed on 20/12/2019. The applicant/accused has also cited the mother and sister of the minor victim as defence witnesses. Both these defence witnesses did not come present in the Court despite of issuingailable warrants for 15/2/2020, 28/2/2020 and NBW's for 9.3.2020 and further for 23.3.2020. However, on 23/3/2020 due to pandemic Covid-19 case could not proceed further in the light

of directions passed by the Hon'ble High Court from time to time, so possibility of procuring such letter in these circumstances cannot be ruled out.

15. Further, the sequence of events itself raise question on the genuineness of this letter. The prosecutrix comes in witness box and fully supports the prosecution case. Prosecution gives up her mother as PW. The applicant accused cites mother of minor victim as defence witness but despite issuance of summons Bws/NBWs her presence could not be secured on various dates and meantime due to Covid-19 pandemic physical work in the court remains suspended. Thereafter, suddenly, this letter emerges in 2<sup>nd</sup> bail application of accused. Interestingly, then on the basis of suggestions put to her during her cross examination, the alleged letter, staged to be written by minor victim is received by accused in jail. Hence all developments appears unnatural on the face of it and seems afterthought.

16. Next, during her examination-in-chief, minor victim PW-1 has categorically stated that complaint Ex. P-1 is in her own handwriting and no question or suggestion was put to her in this regard in her cross examination. Even by a cursory, it could be firmly said that both Ex. P-1 and Annexure P-1 are not written by the same hand. Also, style of signature of victim on her statement made in court and on her statement under Section 164 crpc and on Ex. P-1 and on medical documents are same but they do not match with her alleged signatures on Annexure A-1. Difference can be made out with naked eyes.”

Learned counsel, appearing for the U.T., Chandigarh, further submits that since on the face of it, the aforesaid letter appears to be an evidence created by the petitioner, just to delay the trial and cause unnecessary humiliation to the minor victim, who is aged about 11 years only, no case is made out to recall her.

After hearing learned counsel for the parties, considering the fact that the victim/PW-1 has duly supported the prosecution version and has proved the original complaint (Ex. P-1), which is in her own handwriting, and also in view of the fact that medical evidence duly supports the allegations of penetrative sexual assault on the victim, I find no ground to allow the application to recall the victim/PW-1.

Accordingly, the present petition is dismissed.

**25.01.2021**

*Waseem Ansari*

**(ARVIND SINGH SANGWAN)  
JUDGE**

*Whether speaking/reasoned*

*Yes/No*

*Whether reportable*

*Yes/No*