

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

CRM No.31636 of 2021 in/and
CRR No.3431 of 2018 (O&M)
Date of Decision: September 30, 2021

Azad

...Petitioner

Versus

State of Haryana and another

...Respondents

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present:- Mr. Sarfraj Hussain, Advocate
for the petitioner.

Ms. Mahima Yashpal, DAG Haryana.

JAISHREE THAKUR, J. (Oral)

CRM-31636-2021

This is an application that has been filed seeking to prepone hearing in the main case, which is now listed for 10.11.2021.

For the reasons mentioned in the application, the same is allowed. Hearing in the main case is preponed and the same is taken up today.

CRR-3431-2018

This is a criminal revision that has been filed seeking to challenge the order dated 31.08.2018 passed by the trial court whereby, the application filed by the petitioner under Section 311 Cr.P.C. stood dismissed.

Learned counsel appearing on behalf of the petitioner would contend that the petitioner has been falsely implicated in the present FIR, as would be evident from the fact that there are enough photographs and CD available, which would reflect that the prosecutrix being a major was in a relationship with the petitioner herein. It is argued that the petitioner was in custody at the time when the statement of the prosecutrix was recorded and, therefore, he was not in a position to put the said photographs and CD to her in the cross-examination. It is also argued that when he was released on bail, he moved an appropriate application under Section 311 Cr.P.C. seeking permission to recall the prosecutrix (PW1) and put the relevant questions to her pertaining to CD and photographs, so as to be able to establish his innocence. Counsel would argue that the power to summon the material witness or examine a person under Section 311 Cr.P.C. is very wide and that the court may at any stage of enquiry, trial or other proceedings under the Code can summon any person as a witness or recall and re-examine any person already examined, if the evidence appears to be essential to the just decision of the case. He would rely upon judgments rendered by this court in ***Kirti vs. State of Haryana and another***, CRM-M-31709-2016, decided on 23.08.2018 and ***Jitender vs. State of Haryana***, CRM-M-23664-2011, decided on 26.09.2011 in support of his arguments.

Per contra, learned counsel appearing on behalf of the respondent-State opposes the revision petition, while contending that the said application under Section 311 Cr.P.C. has been moved just to delay the proceedings of the case, as the prosecutrix has already been thoroughly examined. She thus prays for dismissal of the revision petition.

I have heard learned counsel for the parties and find merit in the arguments raised by learned counsel for the petitioner. Admittedly, the petitioner herein is facing trial under Sections 363, 366-A, 376-D, 384, 506 of IPC and Section 4 of POCSO Act. He was in custody and has been released only after the statement of the prosecutrix was recorded. The trial court dismissed the application only on the ground that there was a delay in moving the said application after his release on bail and that counsel for the petitioner herein did not put any question to the prosecutrix when she was being cross-examined. The law regarding recalling the witness is well-settled and courts have power to recall a witness already examined if it would be essential to arrive at a just conclusion. In this case, the petitioner herein was not able to furnish the necessary documents to his counsel when the prosecutrix was being examined and, therefore, this court deems it appropriate to allow the petitioner herein one effective opportunity to recall the prosecutrix so that he is in a position to cross examine her regarding the necessary documents, photographs and CD.

Consequently, the instant criminal revision is allowed and the impugned order is hereby set aside. The trial court is directed to give only one effective opportunity to the petitioner herein to recall the prosecutrix and re-examine her regarding the said necessary documents, photographs and CD.

September 30, 2021

vijay saini

**(JAISHREE THAKUR)
JUDGE**

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No