

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH
(Heard through VC)

CRM-M- 38083 of 2019 (O&M)
Date of Decision: July 7, 2021

Akash Verma and another

...Petitioners

Versus

State of Haryana and another

...Respondents

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present:- Mr. Rahul Sharma, Advocate,
for the petitioners.

Mr. A.P.S. Deol, Senior Advocate with
Mr. Vishal Lamba, Advocate,
for respondent No. 2—complainant.

Mr. Dhruv Suhag, AAG Haryana.

JAISHREE THAKUR, J.

1. Challenge has been made to the order dated 20.8.2019 passed by the Additional District & Sessions Judge, Fatehabad, whereby an application under Section 311 of the Code of Criminal Procedure (hereinafter referred to as **“the Code”**) filed by the petitioners for recalling two witnesses has been dismissed.

2. In brief, the facts as stated are that the petitioners herein came to be falsely accused in FIR No. 190 dated 29.4.2017 under Sections 120-B, 376-D and 506 IPC at Police Station City Tohana, District Fatehabad. The statement of the prosecutrix was recorded under Section 164 of the Code on 30.4.2017. During the course of proceedings before the trial court, the matter was compromised on 18.1.2018 between the complainant and the

accused, whereby the parties agreed to solemnise a marriage of the complainant with one of the accused, namely Aashish Kumar. One of the terms of the compromise was that the complainant shall try to secure the release of all the accused. Thereafter, regular bail of the accused was allowed. It is stated that the prosecution witnesses that is Dr.Veena Batra and Inspector Maju Singh were examined by the prosecution, however on account of the compromise entered into between the parties, they could not be cross-examined at length. It is also argued that as the compromise between the parties could not be effected, an application was preferred under Section 311 of the Code by the complainant for re-examining herself and for recalling the other 2 witnesses, namely her mother and father, which was allowed. The trial court by order dated 7.8.2018 directed for recalling the witnesses and recording the statements afresh. This order was unsuccessfully challenged before this Court and the Supreme Court.

3. Mr. Rahul Sharma, learned counsel for the petitioner would contend that PW5 Dr Veena Batra and PW6 Inspector Maju Singh were examined as witnesses on 06.03.2018, whereby the application for recalling of the witnesses by the trial court was allowed on 07.08.2018, that is subsequent to the cross-examination having being conducted. It is argued that the cross examination that was conducted was not proper, as on date there was a compromise in effect. It is argued that Section 311 of the Code would permit recalling of a witness at any stage of the case and therefore the impugned order declining recalling of the said witnesses is not sustainable.

4. Per contra, Mr. A.P.S. Deol Senior Advocate, assisted by Mr. Vishal Lamba, Advocate, and Mr. Dhruv Sihag AAG Haryana, contend that

the allegations in the FIR pertain to a gang rape under Section 376-D IPC. It is argued that the prosecutrix had recorded her statement under Section 164 of the Code after registration of the FIR on 30.04.2017. However, the matter was settled between the parties and it was agreed that one of the three accused would marry the complainant. Pursuant to the settlement the prosecutrix appeared as PW.1 and resiled from her version given in the FIR and the statement under section 164 of the Code, as did her parents. In terms of the compromise, all the three accused were released on bail and arrangements were made for wedding to be solemnised between one of the accused and the prosecutrix, however, on the day of the wedding i.e. on 9.3.2018, the accused did not turn up. Immediately an application was preferred on 27.03.2018 stating that she had deposed under undue influence, however the accused and his family members backed out of the compromise after bail had been secured for the accused. The application for recalling the prosecutrix and her parents was allowed by the Additional District & Session Judge and affirmed right up to the Supreme Court. It is argued that the evidence of the prosecution was closed on the 2.5.2019 and the statement under Section 313 of the Code was recorded on the 22.5.2019. It is argued that the application for recalling the witnesses examined on 06.03.2018 has been preferred after an inordinate delay.

5. I have heard the learned counsel for the parties and have also perused the impugned order passed by the trial court declining the application under Section 311 of the Code as filed on behalf of the petitioners.

6. The petitioners seek to recall Dr.Veena Batra (PW5) and

Inspector Manju Singh (PW6) for further cross-examination in view of the fact that proper cross-examination could not be done on 6.3.2018 in view of the compromise that was already in effect and also taking on account that the prosecutrix in her statement had not supported the version given in the FIR. A perusal of the statements recorded and the subsequent cross-examination would reveal that PW6 Inspector Manju Singh was put through detailed cross-examination. Relevant questions have already been put to her of the investigation done by her regarding date, time, place of occurrence, photographs taken, injury visible, details of investigation done at hotel etc. and as regards the examination of PW5 Dr. Veena Batra due opportunity was afforded to cross-examine as was done with Inspector Manju Singh, but the counsel only choose to suggest that the MLR was wrongly prepared. The argument that proper questions could not be put to the witnesses in view of the compromise being in effect is not sustainable, as the medical was on the record and available for the counsel to cross-examine the witnesses. There is nothing on the record to show that due opportunity was denied to the petitioners herein from cross-examining the witnesses.

7. No doubt, an onerous duty has been cast upon the courts to ensure fair trial and to arrive at the truth, for which a witness can be recalled to testify. The scope and ambit of Section 311 of the Code is wide enough to permit recalling of a witness *at any stage of the case*, but the said power has to be exercised with discretion after the court is satisfied that such application is not a frivolous or a vexatious one only to delay the trial or fill up any lacunae in the same. In the case of **Swapan Kumar Chatterjee Vs. Central Bureau of Investigation 2019 (14) SCC 328**, it has been held that:

"It is well settled that the power conferred under Section 311 should be invoked by the court only to meet the ends of justice. The power is to be exercised only for strong and valid reasons and it should be exercised with great caution and circumspection. The court has vide power under this section to even recall witnesses for reexamination or further examination, necessary in the interest of justice, but the same has to be exercised after taking into consideration the facts and circumstances of each case. The power under this provision shall not be exercised if the court is of the view that the application has been filed as an abuse of the process of law."

8. In the present case, the compromise was already in effect and in knowledge of the petitioners. This court on a perusal of the pleadings and the dates as mentioned concludes that the petitioners had been diligently following their case and PW6 was cross examined in great length and detail and equal opportunity was given for PW 5. Now seeking to recall the witnesses already duly examined is nothing but an effort to delay the entire trial and to fill up the lacunas which cannot be permitted at any cost.

9. Consequently finding no merit in the instant petition, the same is dismissed.

July 7, 2021
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(JAISHREE THAKUR)
JUDGE

Whether speaking/reasoned :	Yes
Whether Reportable :	No