

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

(109)

CRR-167-2022

Date of Decision: 04.02.2022

Balkar

--Petitioner

Versus

State of Haryana

--Respondent

CORAM:- HON'BLE MR. JUSTICE RAJESH BHARDWAJ.

Present:- Mr. G.C. Shahpuri, Advocate for the petitioner.

RAJESH BHARDWAJ.J (Oral)

Matter has been taken up through video conferencing via Webex facility in the light of the Pandemic Covid-19 situation and as per instructions.

The petitioner has approached this Court by way of filing the present revision petition impugning the order dated 10.12.2021, whereby an application filed under Section 311 Cr.P.C by the victim-complainant was dismissed by the learned Trial Court.

As per facts of the case, the petitioner-complainant, who is father of victim lodged the FIR in question for the offences as mentioned therein. The investigation commenced and after completion of the same challan was presented. Thereafter, the Trial Court was seized of the matter. During the trial the victim was examined, however, thereafter an application under Section 311 Cr.P.C was filed on behalf of the victim for granting her permission for her re-examination.

Learned counsel for the petitioner has vehemently contended that though victim was examined, however, due to her ill health she could not depose the entire facts and hence it necessitated her to file the application under Section 311 Cr.P.C for her re-examination. Counsel

submits that power under Section 311 Cr.P.C is wide enough and has been incorporated to prevent the miscarriage of justice. He has contended that it was expedient in the interest of justice hence the Trial Court should have allowed the application allowing her re-examination. Counsel has relied upon the judgement passed by this Court in ***CRM-M-35197-2018 titled as Akash Verma and another Vs. State of Haryana and others, decided on 15.11.2018***. Reliance has also been placed on a decision rendered by Hon'ble Supreme Court in case of ***Shiv Kumar Vs. Hukam Chand and others (1999) 7 SCC 467*** and has contended that the conclusion drawn by the learned Trial Court is totally unsustainable in the eyes of law.

I have heard learned counsel for the petitioner at length and have gone through the records made available.

Having heard the arguments advanced by learned counsel for the petitioner, it is apparent that the victim while stepping into the witness box on 18.1.2021 had duly supported the case of the prosecution and was cross-examined at length. The arguments advanced by learned counsel for the petitioner that it was because of her ill health that she could not narrate the entire facts, however, nothing on record was produced in support of the arguments advanced that the petitioner was not well on that day. As per the record, all the prosecution witnesses already stand examined by the Trial Court. Even otherwise the victim being a minor cannot be called time and again as per Section 33(5) of the POCSO Act, 2012. The observations of the learned Trial Court that the application has been filed deliberately due to some kind of compromise between the parties, cannot be ignored. There is no gainsaying that the court has been granted ample power under Section 311 Cr.P.C to prevent the injustice. However, in view of the law settled, it

is apparent that the Hon'ble Supreme Court has laid down that the power under Section 311 Cr.P.C should be invoked only to meet the ends of justice. The power should be exercised for strong and valid reasons and it should be exercised with great caution and circumspection. Reliance in this regard can be placed in cases of *Swapan Kumar Chatterjee Vs. Central Bureau of Investigation 2019(14) SCC 328*.

In all its humility, this Court has no dispute with the judicial precedents relied upon by learned counsel for the petitioner, however, every case has its own facts and circumstances. The case in hand pertains to a victim under the POCSO Act. The stage of the trial and the relevant time at which the application under Section 311 Cr.P.C is filed, are the important factors to be taken into consideration before invoking the power under Section 311 Cr.P.C. In the facts and circumstances of the present case, the judicial precedents relied upon by the counsel for petitioner are distinguishable. Applying the parameters laid down by the Hon'ble Supreme Court in the above cases to the facts and circumstances of the present case, this Court finds no infirmity in the conclusion arrived at by the learned Trial Court.

The petition being devoid of any merit is hereby dismissed.

(RAJESH BHARDWAJ)
JUDGE

04.02.2022

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Whether speaking/reasoned:	Yes/No
Whether Reportable:	Yes/No