

**233 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CRM-M-2068-2020

Date of decision : 08.04.2022

Balbir Singh

.....Petitioner

versus

State of Punjab and others

..... Respondents

CORAM : HON'BLE MR. JUSTICE RAJESH BHARDWAJ

Present :- Mr. Angad Pawar, Advocate
for the petitioner.

Ms. Sakshi Bakshi, AAG, Punjab.

RAJESH BHARDWAJ, J. (Oral)

This petition has been filed for setting aside the order dated 19.07.2018 passed by the Additional Sessions Judge, Kapurthala in case FIR No.50 dated 25.06.2014, registered under Sections 363/366-A IPC at Police Station Begowal whereby charges have been framed against accused persons, under Sections 120-B IPC, 363 IPC read with Sections 120-B, 366 IPC read with Sections 120-B IPC, 376-D IPC read with Sections 120-B IPC, 323 IPC read with Sections 120-B IPC, 341 IPC read with Section 120-B IPC and Sections 4 & 8 of the Protection of Children from Sexual Offences Act, 2012 read with Section 120-B of IPC and subsequent proceedings arising therefrom.

It has been contended that during the trial, the prosecution filed an application under Section 311 Cr.P.C. for summoning PW-2, PW-4, PW-8 and the said application was allowed by the trial Court on 07.05.2018 after taking no objection from the accused. Thereafter, the case was fixed for evidence of PW-2, PW-4 and PW-8. The trial Court granted one opportunity to the prosecution for examining these three witnesses summoned under Section 311 Cr.P.C. However, the prosecution failed to produce these witnesses despite having been granted the time of 10 days. The trial Court finding lackluster behaviour of the prosecution, closed the prosecution evidence.

Learned counsel for the petitioner has submitted that the examination of these witnesses by the prosecution was necessary as and it was expedient in the interest of justice and for the just decision of the case. He submits that the petitioner is the complainant of the FIR and being victim, non-production of the witnesses summoned under Section 311 Cr.P.C. has caused prejudice to the case of the petitioner. He has submitted that the provision under Section 311 Cr.P.C. are sacrosanct and allows the Court to exercise its power in order to prevent the miscarriage of justice. The prosecution has intentionally not availed the opportunity granted by the trial Court by not producing these witnesses and thus, the same has resulted in the miscarriage of justice.

After hearing counsel for the petitioner and perusing the record, it is apparent that the case pertains to an offence against the minor. An application under Section 311 Cr.P.C. was filed by the prosecution as the same was felt necessary for the just decision of the case. There is nothing on record showing as to why the prosecution could not avail opportunity to produce the witnesses despite the trial Court having been granted an opportunity for producing these witnesses in order to secure justice.

Section 311 Cr.P.C. read as under:-

“311. Power to summon material witnesses, 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.”

From the bare reading of the provision of Section 311 Cr.P.C., it is apparent that the Court has ample power to re-examine or recall any

such person whose evidence appears to be essential to the just decision of the case. Hon'ble the Supreme Court in a case titled Swapan Kumar Chatterjee Vs. Central Bureau of Investigation, 2019(14) SCC 328 held as under:-

“12. 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 re-examination 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.”

In the light of facts and circumstances of the present case and the law settled by the Hon'ble Supreme Court in abovesaid case, this Court finds that the examination of said witnesses i.e. PW-2, PW-4 and PW-8 is necessary for the just decision of the case. The accused have a right to cross-examine these witnesses. Consequently, the petition is allowed. The prosecution is granted two opportunities for producing these witnesses. Trial Court is requested to fix the dates for producing the witnesses as per its convenience.

The petition is allowed in above-mentioned terms.

08.04.2022
m. sharma

(RAJESH BHARDWAJ)
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No