

CRR-244-2022

Date of decision: 07.03.2022

HARJIT @ HARJIT SINGH

...PETITIONER

VERSUS

STATE OF HARYANA

...RESPONDENT

CORAM: HON'BLE MR. JUSTICE VIVEK PURI

Present: Mr. Harinder Pal Singh Ishar, Advocate
for the petitioner.

Mr. Zorawar Singh Chauhan, DAG, Haryana.

*(The case has been taken up through video conferencing on
account of Covid-19 Pandemic).*

VIVEK PURI, J. (ORAL)

The petitioner has impugned the order dated 15.12.2021 passed by the learned Additional Sessions Judge/Special Court, Panchkula vide which application for recall of three witnesses i.e. PW1 the victim, PW2 the mother of the victim and PW3 the father of the victim for cross-examination has been declined. The petitioner is stated to be facing trial for having committed the offences under Sections 354/509 IPC and Section 12 of the Protection of Children from Sexual Offences (POCSO) Act, 2012.

Learned counsel for the petitioner contends that the examination-in-chief of the aforesaid three witnesses was recorded on 19.10.2021. The counsel appearing for the petitioner in the trial Court was not available as at the earlier instance he had gone to District Court, Chandigarh and thereafter, he had to rush to PGI, Chandigarh as his ailing close relative was admitted in the hospital. The information was also given with regard to the non-availability of the counsel for the petitioner but the request for adjournment was declined on 19.10.2021. It has been further stated that the application for recall of the witnesses was moved on

difficulty of the counsel representing the petitioner in the trial Court.

Learned State counsel is also present in pursuance of advance notice and has opposed the prayer on the score that the minor victim and her parents will be put to great inconvenience if they are re-called for cross-examination.

It is no doubt true that the victim is of tender age and she has been sought to be re-called along with her parents for the purpose of cross-examination on behalf of the petitioner but at the same time it has to be borne in mind that a fair opportunity of defence has to be afforded to the petitioner/accused particularly because the counsel was in some personal difficulty. It is also to be noted that the case was called in the pre-lunch session and a specific request was made to the effect that the counsel was busy in the District Court, Chandigarh. Moreover, in the post-lunch session, the request was made that the counsel has gone to visit some ailing relative in the hospital. The recall of the witnesses for the purpose of cross-examination appears to be essential for the just decision of the case.

Keeping in view the circumstances of the case, it is deemed appropriate that an effective opportunity is afforded to the accused/petitioner to cross-examine the aforesaid three witnesses. For the inconvenience which is likely to be caused to the victim and her parents, they can be compensated in terms of costs. As such, the present petition is allowed and the witnesses i.e. PW1, PW2 and PW3 are allowed to be re-called for the purpose of cross-examination by the petitioner/accused subject to the condition that the petitioner shall pay a sum of Rs.10,000/-each to PW1, PW2 and PW3. The amount pertaining to the minor victim shall be paid through her mother.

Disposed of in the aforesaid terms.

07.03.2022
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(VIVEK PURI)
JUDGE

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