

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

CRM-M-8006-2022 (O&M)

Date of Decision: 14.3.2022

Sanjeev

..... Petitioner

Versus

State of Haryana

.....Respondent

CORAM: HON'BLE MR. JUSTICE RAJESH BHARDWAJ

Present: Mr. R.K. Handa, Advocate, for the petitioner.

Rajesh Bhardwaj, J.

CRM-9141-2022

For the reasons mentioned in the application, the same is allowed. The date of hearing in the main case is preponed for today. The case is taken up for hearing for today itself.

Main case

Prayer in the present petition is for quashing of order dated 30.11.2021, whereby, an application under Section 311 Cr.P.C. filed by the petitioner-accused for recalling witness (PW-8) for re-examination was dismissed by the learned trial Court.

It has been contended that the FIR in question was lodged by the complainant Mamchand. It was alleged that the daughter of his mother-in-law (massi saas) i.e. the victim, aged about 17 years, came to stay at his house in village Mohra. On 18.9.2020 at about 2:00 p.m., the victim went from the house without disclosing anything. It was suspected that the victim had been allured by Balwinder Kumar @ Monti on the pretext of marriage. Despite their search, they failed to trace her out and request was made to

take strict action against the accused. The investigation commenced and challan was presented against both the accused i.e. Balwinder Kumar @ Monti and Sanjeev (the present petitioner).

It has been submitted by learned counsel for the petitioner that the petitioner was falsely implicated in this case and he filed an application under Section 311 Cr.P.C. for recalling the prosecutrix for re-examination, as the same was expedient and in the interest of justice but the learned trial Court has illegally declined the same. It has been submitted that the counsel for the petitioner could not have discussions with the petitioner and hence, new counsel was engaged, who advised for recalling of the prosecutrix for re-examination for the just decision of the case. However, the learned trial Court failed to appreciate the same and declined the same. He submits that the Court had ample power under Section 311 Cr.P.C. and the same can be invoked at any stage of the trial but the learned trial court failed to appreciate the same and hence has drawn a wrong conclusion.

I have heard learned counsel for the petitioner and perused the record.

A perusal of the impugned order shows that as per allegations in the case both the accused i.e. Balwinder Kumar @ Monti and Sanjeev had kidnapped the minor prosecutrix and they committed penetrative sexual assault upon the minor prosecutrix in conspiracy with each other. The prosecutrix was examined as PW-8 in detail and during her examination before the trial Court she did not support the case of the prosecution qua the co-accused Balwinder Kumar @ Monti. However, the prosecutrix has supported the case of the prosecution qua the petitioner. The main thrust of

the arguments of learned counsel for the petitioner is that the accused has engaged a new counsel and hence, minor prosecutrix is to be re-examined further, for the just decision of the case.

Section 311 Cr.P.C does give power to a Court to recall and re-examine any person already examined if it appears to be essential for adjudication of the case but the said power has to be exercised with care and caution. It should not be used as a tool to delay the trial or as a tool to fill up the lacunae either by the prosecution or by the defence.

In Mohanlal Shamji Soni v. Union of India and another, 1991 Supp (1) SCC 271, the Supreme Court, while explaining Section 311 Cr.P.C, has observed as under:

“ The aid of the section should be invoked only with the object of discovering relevant facts or obtaining proper proof of such facts for a just decision of the case and it must be used judicially and not capriciously or arbitrarily because any improper or capricious of the power may lead to undesirable results. Further, it is incumbent that due care should be taken by the Court while exercising the power under this section and it should not be used for filling up the lacuna left by the prosecution or by the defence or to the disadvantage of the accused or to cause serious prejudice to the defence of the accused or to give an unfair advantage to the rival side and further the additional evidence should not be received as a disguise for a retrial or to change the nature of the case against either of the parties. The jurisdiction of the Court must be dictated by exigency of the situation, and fair-play and good sense appear to be the only safe guides and the requirements of justice command the examination of any person which would depend on the facts and circumstances of each case. ”

Also, the repeated recalling of the minor girl/ victim is in

negation of Section 33(5) of the POCSO Act which mandates that the child should not be repeatedly called to testify in a Court.

In view of the above, the petition is hereby dismissed.

14.3.2022
sharmila

(RAJESH BHARDWAJ)
JUDGE

Whether Speaking/Reasoned	:	Yes/No
Whether Reportable	:	Yes/No