

127

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

CRM-M-8292-2022

Date of Decision: July 11, 2022

Neeraj

.....Petitioner

Versus

State of Haryana and another

.....Respondents

CORAM: HON'BLE MR.JUSTICE RAJESH BHARDWAJ

Present: Mr.Rajnikant Upadhyay, Advocate
for the petitioner.

.....

RAJESH BHARDWAJ, J.(ORAL)

The petitioner has approached this Court by way of a present petition impugning the order dated 27.01.2022 vide which the application filed by the petitioner under Section 311 Cr.P.C. for recalling PW2, i.e. the prosecutrix, for conducting further cross-examination was declined.

Counsel for the petitioner has contended that FIR in question was lodged by the prosecutrix wherein it was alleged that accused Neeraj came to her house and after finding her alone forcibly committed wrong act with her. After seeing her parents, he ran away. She suffered bruises while scuffling with the accused.

On the commencement of investigation, the challan was presented and the charges were framed against the accused. Learned trial Court examined the prosecution witnesses including the prosecutrix. She was cross-examined by the defence counsel as well. Counsel for the petitioner submits that the prosecutrix did not support the case of the prosecution when her statement was recorded under Section 164 Cr.P.C. He

submitted that the mother and brother of the prosecutrix were examined by the trial Court and they also did not support the prosecution case. However, the prosecutrix under the pressure of the family members supported the case of the prosecution and thus, it was just necessary for the decision of the case to recall her for further cross-examination. However, the learned trial Court illegally rejected the same which resulted in miscarriage of justice. The petitioner has relied upon the judgment passed by Hon'ble Apex Court in Criminal Appeal No.709 of 2013, decided on 08.05.2013 (Natasha Singh vs CBI(State)) and submits that the power under Section 311 Cr.P.C. are to be invoked by the Court in order to meet the ends of justice, however, the learned trial Court failed to appreciate the same and thus drawn a wrong conclusion in declining the application filed by the petitioner.

Heard.

FIR in question was lodged by the prosecutrix-victim, who is 13 years of age. She has specifically named the petitioner regarding his complicity in the alleged offence. A thorough and fair inquiry was completed and the challan was presented against the accused. No doubt the victim took a contrary stand while making her statement under Section 164 Cr.P.C., however when she was examined by the trial Court as PW2, she fully supported the case of the prosecution. The defence counsel cross-examined her at length. Mother and brother of the prosecutrix did not support the case of the prosecution before the trial Court. The argument advanced by the counsel for the petitioner that as mother and brother of the prosecutrix have not supported the case of the prosecution, hence the stand taken by the victim in supporting the case of the prosecution would be doubtful, is no ground for recalling the minor for her re-examination.

The victim is minor and she has duly supported the case of the prosecution. No doubt, the statutory provisions of Section 311 Cr.P.C. are liberal in nature, however, the Court is to invoke its power under Section 311 Cr.P.C. when it is for the just decision of the case. In the case in hand the victim is minor and has already been cross-examined at length. The provisions of Section 311 Cr.P.C. cannot be invoked to fill up the lacunas in the case or to delay the trial. The judgment relied upon by the petitioner is distinguishable on the facts and circumstances of the case.

In **Swapan Kumar Chatterjee vs CBI** (2019) 14 SCC 328 , it has been held by Hon'ble Apex Court as under:-

“11. 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. ”

Section 33(5) of the POCSO Act mandates that the Court should refrain from summoning the minor repeatedly in the Court.

The prosecutrix in this case fully supported the prosecution version while being examined as PW2 by the trial Court. Defence counsel also cross-examined her at length. Hence, recalling again her under Section 311 Cr.P.C. only on the ground that she did not support the case of the prosecution while recording her statement under Section 164 Cr.P.C. is not a valid ground.

Weighing the facts and circumstances of the case on the anvil of the law settled, this Court finds no merit in the petition and the same is hereby dismissed.

July 11, 2022
meenuss

(RAJESH BHARDWAJ)
JUDGE

- | | | |
|----|-----------------------------|--------|
| 1. | Whether speaking/reasoned ? | Yes/No |
| 2. | Whether reportable ? | Yes/No |