

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH

CRR-499-2022 (O&M)

Date of Decision: March 28, 2022

Taranpreet Singh

... Petitioner

Versus

State of Punjab

... Respondent

CORAM: HON'BLE MR. JUSTICE VIVEK PURI

Present: Mr. Dinesh Maurya, Advocate,
for the petitioner.

Vivek Puri, J.

The petitioner has assailed the order dated 23.02.2022 passed by the Court of learned Additional Sessions Judge, Fast Track Special Court, Patiala, vide which the application under Section 311 of the Code of Criminal Procedure (hereinafter referred to as the 'Code') for recall of PW1 and PW2 for further cross-examination has been dismissed.

The petitioner is facing trial for having committed the offence punishable under Sections 376, 363, 366A of the Indian Penal Code read with Section 4 of the Protection of Children from

Sexual Offences Act (hereinafter referred to as 'the Act').

The petitioner had submitted an application under Section 311 of the Code for recall of the aforesaid witnesses on the score that the witnesses were examined when the petitioner was being represented by the another counsel. The perusal of the cross-examination shows that the material questions with regard to the occurrence, age and the statement under Section 164 of the Code were not put to the witnesses. Accordingly, the recall of the witnesses has been sought.

The application was resisted on the score that the same has been moved to delay the proceedings. The cross-examination of both the witnesses was conducted by putting all the material/relevant questions and no ground is made out to recall the witnesses after engaging a new counsel.

Learned counsel for the petitioner contends that when the witnesses were examined, the petitioner was represented by another counsel. Subsequently, with the change of counsel it emerged that the relevant and the important

questions have not been put to the witnesses during their cross-examination. As such, the recall of the PW1 and PW2 for further cross-examination is essential for the just decision of the case.

Section 311 of the Code enables the Court with the power to summon, recall and re-examine any witness, who has already been examined. The section confers a wide discretion on the Court to act as the exigencies of justice and the circumstances of the case may require. The Court can recall a witness in the event, the further examination of the witness appears to be essential for the just decision of the case. However, it has also to be borne in mind that such power cannot be exercised to permit any of the parties to fill up lacuna in its case. There must be sufficient and reasonable material to justify for exercise of the discretionary power vested in the Court. Even the mistake or lapse on the part of the defence counsel without any significant and substantial material cannot be termed to be circumstance to justify the recall of witnesses in each and every case.

On adverting to the merits of the present case, it is significant to note that PW1 is the victim and PW2 is her father. The perusal of the impugned order indicates that the examination-in-chief of the PW1 was recorded on 14.01.2020 and 24.01.2020. Thereafter, she was cross-examined on 11.02.2020 i.e. after a lapse of period of about 17 days. The examination-in-chief of PW2 was recorded on 14.01.2020 and his cross-examination was recorded after a lapse of period of about one year i.e. on 02.02.2021. In these circumstances, it is amply clear that there was sufficient opportunity available with the petitioner to prepare during the intervening period and effectively cross-examine the witnesses. Even the application for recall of the witnesses has been moved after a time gap of two years from recording the cross-examination of PW1 and one year from the cross-examination of PW2. Although, the power under Section 311 of the Code can be exercised at any stage of the trial, but there is nothing to indicate as to what prevented the petitioner from moving such application at the earlier instance. It shall not be out of place to mention here that there is categoric and specific

observation in the impugned order that the trial is at fag end as the prosecution evidence already stands closed on 11.02.2022.

Furthermore, the impugned order also indicates that the witnesses have been cross-examined on the material aspects. PW1 had deposed during the course of her deposition that her statement under Section 164 of the Code was recorded as tutored to her by the petitioner who had threatened her to make statement in his favour. Even the witness, who had deposed with regard to the date of birth of the victim has also been cross-examined by the petitioner.

The reason assigned for recall of the witness is to the effect that the earlier counsel engaged by the petitioner has not effectively cross-examined the witnesses on all the material aspects of the case. Significantly, the change of counsel in the instant case cannot be permitted to be a circumstance to recall the witnesses particularly because there was sufficient time gap and full opportunity was afforded for the effective cross-examination of the witnesses. Moreover, if recall of witnesses on such ground is permitted, it can result in repeated recall of

the witnesses with the subsequent change of counsel.

It shall be appropriate to mention here that the victim is less than 18 years of age, the allegations are with regard to the commission of offence under Section 4 of the Act and furthermore, as per the provisions of Section 33 (5) of the Act, the Special Court has to ensure that the child is not called repeatedly to testify in the Court.

In these set of circumstances, no illegality or irregularity is made out in the impugned order, which may warrant interference by this Court.

Instant petition is dismissed accordingly.

March 28, 2022
vkd

(Vivek Puri)
Judge

Whether reasoned/speaking:	Yes
Whether reportable :	Yes