

**133 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH****CRM-M-14886-2022****Date of decision : 07.04.2022****Gurpal Ram @ Gurpal****.....Petitioner****versus****State of Punjab****..... Respondent****CORAM : HON'BLE MR. JUSTICE RAJESH BHARDWAJ***********Present :- Mr. Balbir Singh, Advocate
for the petitioner.***********RAJESH BHARDWAJ, J. (Oral)**

Prayer in the petition is for setting aside the order dated 25.03.2022 passed by the learned trial Court vide which the application under Section 311 Cr.P.C. for re-examination of PW-4 and PW-5 filed by the prosecution stands allowed illegally and arbitrary by learned trial Court in case FIR No.31 dated 18.05.2021, under Section 376 of the Indian Penal Code, 1860 and Sections 4 and 6 of Protection of Children from Sexual Offences Act, 2012 (for short 'the Act'), registered at Police Station Aur, District SBS Nagar.

It has been contended that the FIR in question was lodged by the prosecutrix (name concealed). It was alleged that she is 16 years of age and her date of birth is 15.01.2005. On 17.05.2021 when she was alone at home, Gurpal Ram came to her house and thereafter, he told her that his daughter-in-law is calling her. On his saying, she visited their house but there was no one in the house. Gurpal Ram called her to his room and locked her inside. He forcibly raped her. She remained frightened and finally, she disclosed to her Bharjai Meena Rani. Thereafter, the FIR was lodged to take the legal action against the culprits. During the course of trial, the

prosecution filed application under Section 311 Cr.P.C. for

recalling ASI Balbir Singh and Constable Sandeep Kumar. The same was allowed by the trial Court vide its impugned order dated 25.03.2022. Aggrieved by the same, the petitioner who is accused in the case has approached this Court by way of the present petition.

Learned counsel for the petitioner has submitted that learned trial Court has fallen in error in accepting the application under Section 311 Cr.P.C. filed by the prosecution. He submits that the power under Section 311 Cr.P.C. cannot be used to fill up the lacunae in the case of the prosecution. He has submitted that learned trial Court has illegally accepted the arguments raised by the prosecution that it was the clerical mistake in the affidavits filed and the same deserves to be *set aside*. However, it was never clerical mistake but the witnesses ordered to be recalled were earlier examined and cross-examined in detail. The prosecution had availed the ample opportunity in the examination of these two witnesses and hence, by recalling them again, the prosecution has made an attempt to fill up the lacunae in its case which is not permissible as per the mandate of the law. He submits that the accused is seriously prejudiced by the passing of the impugned order and hence, the same deserves to be set aside.

I have heard counsel for the petitioner and perused the records.

After hearing counsel for the petitioner and perusing the record, it is apparent that the present case pertains to a heinous offence committed with the minor. The accused is facing trial for the offence under Section 376 of IPC and Section 6 of the POCSO Act. The accused had been examined by board of doctors namely, Narayan Ram, Prince Janagill and Simal Gill, who had been examined as PW-8 to PW-10 respectively. It has been stated categorically in the affidavits i.e. Ex.PW-8/A to Ex.PW-10/A that they had examined Gurpal Ram @ Gurpal son of Atma Ram. The

blood sample of the accused was sent for DNA testing to the Forensic Science Lab, Mohali. Dr. Simmi, medico-legally examined the prosecutrix and had been examined as PW-12 and she has given the details in her affidavit Ex.PW-12/A. Forensic DNA report had been proved on record as Ex.PW-12/C and as per the said report, blood sample of Gurpal Ram and that of the prosecutrix were received for analysis. In the light of such crystal clear facts, the matching of the samples pertaining to Anjali and Shiv Shankar were beyond comprehension where the accused is Gurpal Ram and prosecutrix is victim and the same appeared to be a typographical mistake. The prosecution filed the application for recalling both the relevant witnesses i.e. PW-4 and PW-5. Their affidavits were filed and the ambiguity occurred was to be clarified. Section 311 Cr.P.C. reads 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 attending facts and circumstances of the present case, it is apparent that the case in hand pertains to the sensitive offence and *prima facie* there appears some mistake in the affidavits filed where the name of the accused and the victim are different from the one involved in the present case. The legislature has granted power to the Courts under Section 311 Cr.P.C to meet the exigencies faced in such type of situations. The recalling of the witnesses prayed for would be essential to the just decision of the case as the ambiguity occurred must be resolved to prevent the miscarriage of justice.

In the light of the facts and circumstances of the present case and the law settled by the Hon'ble Supreme Court, this Court finds no infirmity in the view taken by the learned trial Court. No prejudice would be caused to the petitioner by recalling both the witnesses. However, the petitioner would be at liberty to cross-examine the said witnesses. Finding no merits in the present petition, the same is hereby dismissed.

07.04.2022
m. sharma

(RAJESH BHARDWAJ)
JUDGE

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