

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

(133)

CRM-M-21341-2022

Date of Decision: 18.05.2022

Sahib Singh

--Petitioner

Versus

State of Punjab & another

--Respondents

CORAM:- HON'BLE MR. JUSTICE RAJESH BHARDWAJ.

Present:- Mr. R.K. Jaswal, Advocate for the petitioner.

RAJESH BHARDWAJ.J (Oral)

The petitioner has approached this court by way of filing the present petition impugning the order dated 5.5.2022, passed by learned Addl. Sessions Judge, Fast Track Special Court, Patiala, whereby the application filed by the petitioner under Section 311 Cr.P.C in FIR No.55 dated 5.5.2020 registered under sections 354, 354-A, 506 IPC (section 8 of POCSO Act was added later on) at Police Station, Kheri Gandian, Patiala district Patiala, for recalling PW-1, PW-3 and PW-4 for further cross-examination, has been dismissed.

The main thrust of the arguments raised by learned counsel for the petitioner is that the petitioner was being represented by some other counsel at the time of cross-examination of the aforementioned three witnesses. He submits that thereafter he engaged a new counsel on 30.3.2022, who inspected the file and found that certain material questions regarding the occurrence, mobile phone etc. were not put to the witnesses and hence filed the present application under Section 311 Cr.PC for recalling the witnesses. He submits that the provision of Section 311 Cr.P.C is liberal in nature, whereas the learned Trial Court has failed to appreciate the same and thus has illegally rejected the same resulting in causing

injustice to the petitioner. Counsel submits that the provisions of section 311 Cr.P.C allow summoning of the witnesses at any stage and hence the Trial Court has fallen in error in declining the same and hence the impugned order deserves to be set aside.

I have heard learned counsel for the petitioner at length and have gone through the record carefully.

It is apparent that the petitioner is being prosecuted for the offences aforementioned. A perusal of the record would show that the victim is a minor and she along with two other witnesses sought to be recalled, had been cross-examined by the learned counsel for petitioner at length on earlier occasions also. It is evident that after examination of these three witnesses after three months the present application under Section 311 Cr.P.C was filed. The main contention of learned counsel for the petitioner for justifying the filing of application under Section 311 Cr.P.C is the engagement of a new counsel. Besides this, he argued that the victim is in contact with the petitioner even after her deposition before the Trial Court. The argument raised by the counsel leaves no doubt in mind of the court that the application filed under Section 311 Cr.P.C has been filed deliberately. There appears to be every chance of the victim being pressurized which definitely would cause prejudice to the trial. There is no dispute regarding the provisions of section 311 Cr.P.C to be used liberally, however, the court has to be cautious in invoking its power under Section 311 Cr.P.C and examine if the application under Section 311 Cr.P.C has been filed to delay the trial. Besides this, Section 311 Cr.P.C can be invoked if it appears to be essential to the just decision of the case and not for plugging the loopholes in the case. There is no gainsaying that the court has

been granted ample power under Section 311 Cr.P.C to prevent the injustice. However, in view of the law settled, it is apparent that the Hon'ble Supreme Court has laid down that the power under Section 311 Cr.P.C should be invoked only to meet the ends of justice. The power should be exercised for strong and valid reasons and it should be exercised with great caution and circumspection. Reliance in this regard can be placed in case of ***Swapan Kumar Chatterjee Vs. Central Bureau of Investigation 2019(14) SCC 328***. Section 311 Cr.P.C is reproduced hereunder:-

“311. Power to summon material witness, 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.”

Taking into consideration the arguments raised by counsel for the petitioner on the anvil of the law settled, this Court is of the opinion that the impugned order dated 5.5.2022, passed by learned Addl. Sessions Judge, Fast Track Special Court, Patiala suffers from no illegality and resultantly the present petition is hereby dismissed.

(RAJESH BHARDWAJ)
JUDGE

18.05.2022

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Whether speaking/reasoned: Yes/No
Whether Reportable: Yes/No