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

CRR-1070-2022

Date of Decision: May 23, 2022

Manish @ Kaka

.....Petitioner

Versus

State of Haryana

.....Respondent

CORAM: HON'BLE MR.JUSTICE RAJESH BHARDWAJ

Present: Mr.Chetan Gupta, Advocate
for the petitioner.

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RAJESH BHARDWAJ, J.

The petitioner has approached this Court impugning the order dated 20.04.2022 vide which the Additional Sessions Judge, Fast Track Special Court, POCSO, Jind, has declined the application filed under Section 311 Cr.P.C. by the petitioner for recalling PW2-victim.

Learned counsel for the petitioner has contended that the petitioner is being prosecuted in the FIR No.35, dated 25.03.2021, under Sections 363, 366A, 376(2)(f), 376AB, 377, 506 IPC and Section 6 POCSO Act, registered at Police Station Women, Jind. During the course of trial, the victim was examined as PW2. However, the counsel engaged by the accused did not ask the questions which were necessary in the defence and put only one question to her. He further submits that thereafter the petitioner engaged the new counsel who wanted to cross-examine the victim again and hence application under Section 311 Cr.P.C. was filed for recalling the PW2 (victim). However, the same was illegally declined.

He has submitted that the provisions of Section 311 Cr.P.C. are

sacrosanct in nature and the same can be invoked at any stage before pronouncement of the judgment. He submits that re-examination of PW2 is necessary for the just decision of the case and hence the view taken by the learned Fast Track Court in declining the same is against the settled proposition of law and thus, deserves to be set aside.

Heard.

It is evident from the facts of the case that the victim in the present case is ten years old child. The victim was cross-examined by the defence counsel. Mother of the victim was thoroughly cross-examined by the defence counsel. As per the observations, the doctor in his report dated 15.05.2021 found that the victim was a case of Condyloma Acuminata, which might be due to sexual transmission. The provisions of Section 33(5) of POCSO Act mandates that the Court should refrain from summoning a minor repeatedly to the Court. The victim had been cross-examined by the counsel representing the petitioner and mere change of the counsel cannot be a ground for invoking the jurisdiction under Section 311 Cr.P.C., which 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.”

The Court should invoke the provisions of Sections 311 Cr.P.C. if it is necessary for the just adjudication of the case. However, the same cannot be invoked for filling up the lacuna. The victim is a child of ten

years old and in the facts and circumstances of this case, this Court finds that she cannot be allowed to be traumatized by repeatedly summoning to the Court on the basis of frivolous plea taken by the defence. 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.”

The case in hand fails to qualify on the anvil of the law settled.

Hence, the present petition being devoid of any merit is hereby dismissed.

May 23, 2022

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(RAJESH BHARDWAJ)

JUDGE

1. Whether speaking/reasoned ?

Yes/No

2. Whether reportable ?

Yes/No