

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

CRM-M-46405-2018

Date of decision : 19.04.2022

Hari Om

..... Petitioner

versus

State of Haryana and another

.....Respondents

CORAM : HON'BLE MR. JUSTICE RAJESH BHARDWAJ

Present :- Mr. Ravinder Hooda, Advocate
for the petitioner.

Mr. Neeraj Poswal, AAG, Haryana.

RAJESH BHARDWAJ, J.

This petition has been filed for quashing the impugned order dated 17.09.2018 passed by learned Additional Sessions Judge, Rohtak in FIR No.140 dated 01.09.2017, under Sections 366-A, 506, 34 of the Indian Penal Code and Sections 18, 4 & 6 of Protection of Children from Sexual Offences Act, registered at Police Station Women, Rohtak, District Rohtak whereby the application filed by the petitioner under Section 311 Cr.P.C. for recalling PW-1 and PW-2 for further cross-examination has been declined.

As per facts of the case, the FIR in question was lodged by mother of the victim wherein, it was alleged that her daughter-victim 'A' and the girl residing in her neighbourhood i.e. victim 'B' were studying in 8th Class. One boy namely, Hari Om i.e. the petitioner used to stalk her daughter and he tried to commit rape also. Fearing the honour of the family, they compromised the matter and Hari Om apologized. However, despite this, the petitioner again misbehaved with her daughter and on 31.08.2017, he threatened both the victims to sit on motorcycle and his

friend Monu made them to sit on the motorcycle. They took them to one restaurant and after taking them to the restaurant, they tried to remove her clothes and did indecent acts with the victims. On their return, they disclosed everything to the family members and then the FIR in question was lodged. On the commencement of the investigation, the challan was presented, charges were framed and the Special Court started recording the evidence. After having been recorded the evidence of the victims, the accused-petitioner filed an application under Section 311 Cr.P.C. for further examination of the witnesses PW-1 and PW-2 i.e. both the victims. After hearing counsel for the parties, learned trial Court declined the same vide its impugned order dated 17.09.2018. Aggrieved by the same, the petitioner has approached this Court by way of the present petition.

It has been contended by counsel for the petitioner that learned trial Court has fallen in error in declining the application filed by the petitioner. He submits that the power under Section 311 Cr.P.C. is wide enough and the same could have been exercised by the trial Court by allowing further cross-examination of both the victims i.e. PW-1 and PW-2. He submits that the petitioner has changed counsel as earlier counsel did not examine both the witnesses on material issues and hence, their further cross-examination was necessary for the just decision of the case.

Learned State counsel has opposed the submissions made by counsel for the petitioner and has supported the view taken by learned trial Court.

I have heard learned counsel for the parties and perused the records.

After hearing counsel for the parties and perusing the record, it is apparent that both the victims are less than 15 years of age. Both have been examined at length by the accused. The main emphasis of the petitioner is the change of counsel. For the decision of the issue involved, the provision of Section 311 Cr.P.C. is necessary which read 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.”

The victims have been examined at length by the accused. As per the law settled, though the provisions under Section 311 Cr.P.C. are sacrosanct, however, the same cannot be invoked to fill up the lacunae in the case. Besides this, the statutory provision of Section 33(5) of the POCSO Act is relevant which provides that the Special Court shall ensure that the child is not called repeatedly to testify in the Court.

Considering the facts and circumstances of the present case on the anvil of the law settled and the statutory provisions of POCSO Act, this Court finds that the re-examination of said PW1 & PW-2 sought to be summoned in the application filed by the accused-petitioner under Section 311 Cr.P.C. is not necessary for the just decision of the case. The summoning of the victims is nothing but an abuse of the process of the Court. However, the petition being devoid of any merits is hereby dismissed.

(RAJESH BHARDWAJ)
JUDGE

19.04.2022
m.sharma

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