

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

CRM-M-26987-2022

Date of Decision: 18.7.2022

Dilpreet Bawa @ Dilpreet Singh @ Gora Petitioner

Versus

State of Punjab and others Respondents

CORAM: HON'BLE MR. JUSTICE RAJESH BHARDWAJ

Present: Mr. B.S.Bhalla, Advocate, for the petitioner.

Rajesh Bhardwaj, J. (ORAL)

Prayer in the present petition is for setting aside the order dated 23.5.2022 passed by the learned Additional Sessions Judge, Moga, whereby, application moved under Section 311 Cr.P.C. for recalling the victim PW-2 for her re-examination in FIR No.79 dated 16.5.2019, registered under Section 354, 451, 506 IPC (Sections 7 and 8 of POCSO Act, added lateron), was dismissed.

Learned counsel for the petitioner submits that *de hors* the merits of the case, the peculiar facts and circumstances of the case, the petitioner is married with the victim and they have two children as well. He submits that though the prosecutrix supported the case of the prosecution during her earlier examination, however, as both the petitioner and the victim are living as husband and wife and are parents of two children, recalling of the prosecutrix would be in the spirit of Section 311 Cr.P.C., which is sacrosanct and liberal in nature.

Notice of motion.

Ms. Sakshi Bakshi, Assistant Advocate General, Punjab, accepts notice on behalf of the State and Mr. Shivender Pal Singh,

Advocate, accepts notice on behalf of the complainant.

Learned counsel for the complainant affirms the submissions made by learned counsel for the petitioner.

Heard.

The Court is not oblivious of the fact that the present petitioner is not being prosecuted only for the offence under Section IPC, however, under Section 7 and 8 of the POCSO Act as well. It is also the statutory provisions that the minor should not be called to the Court again and again as enumerated under Section 33(5) of POCSO Act, however, Section 311 Cr.P.C. can be invoked, if the conscious of the Court is satisfied that the same has been filed for the just decision of the case. Admittedly, the petitioner and the prosecutrix are not only married but are parents of two minors as on date.

Keeping in view the overall facts and circumstances of the case and spirit of Section 311 Cr.P.C., the present petition is allowed. The petitioner is granted one opportunity for recalling the prosecutrix for her re-examination subject to payment of Rs.10,000/- as costs to be deposited with the Advocates' Welfare Fund at District Courts Moga. The learned trial Court is requested to fix a date keeping in view the facts and circumstances of the case and convenience of the prosecutrix and grant one opportunity to the petitioner for her re-examination.

Needless to say that the petitioner would complete her re-examination in one date. If the same is not done in one date, no further opportunity would be granted.

18.7.2022

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Whether Speaking/Reasoned :
Whether Reportable :

(RAJESH BHARDWAJ)
JUDGE

Yes/No
Yes/No