

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

CRR-1490-2022

Date of Decision: 19.7.2022

Shubham Kumar @ Simbu

..... Petitioner

Versus

State of Punjab

.....Respondent

CORAM: HON'BLE MR. JUSTICE RAJESH BHARDWAJ

Present: Mr. Vishal Sharma, Advocate, for the petitioner.

Rajesh Bhardwaj, J.

The petitioner has approached this Court impugning the order dated 16.7.2022, however, it has been submitted by learned counsel for the petitioner that the order passed was not uploaded on the website of the Court and hence, copy of the order could not be received for appending with the petition.

At the time of arguments, counsel for the petitioner submits that he could receive the copy of the order today itself and hence, placed it on record. He has submitted that the case is fixed for final arguments before the learned trial Court today itself and thus, there is urgency for decision of the petition.

Keeping in view the urgency shown by learned counsel for the petitioner and in the interest of justice, the copy of the impugned order dated 16.7.2022 passed by learned Additional Sessions Judge, Pathankot dismissing the application under Section 311 Cr.P.C. filed by the petitioner for recalling the prosecution witness for further cross-examination by way

of re-examination, is taken on record as Annexure P-6.

Learned counsel for the petitioner has vehemently contended that the petitioner is being prosecuted for the serious offence as contained in the FIR. He submits that the FIR was lodged on 19.6.2019 and thereafter, due to onset of corona period, the trial was conducted through video conferencing. He submits that due to the restrictions of corona the petitioner was restrained from interacting with his counsel. He has also contended that the petitioner changed his counsel and new counsel opined that three witnesses i.e. PW-4 Dr. Akansha, PW-10 Anu Sharma and PW-8 SI Preeti need to be re-called for their further examination, hence, application under Section 311 Cr.P.C. was filed for recalling of these witnesses. He has submitted that the learned trial Court has failed to appreciate the spirit of Section 311 Cr.P.C. and thus, arrived at a wrong conclusion. He submits that the provisions of Section 311 Cr.P.C. are sacrosanct and liberal in nature and the Court should invoke its jurisdiction, if the same is necessary for the just decision of the case. He has submitted that recalling of these three witnesses is necessary for just decision of the case and hence, the rejection of the application resulted in miscarriage of justice to the petitioner and hence, the trial Court has come to a wrong conclusion and thus, the same deserves to be set aside.

Heard learned counsel for the petitioner and perused the record.

The petitioner is facing charges under the Section 376 IPC and Section 4 of POCSO Act, 2012. The victim in the case is a minor. The said application was filed for recalling of three witnesses i.e. PW-4 Dr. Akansha, PW-10 Anu Sharma and PW-8 SI Preeti, Incharge Women Cell, Pathankot.

It is apparent from the record that all these three witnesses were cross-examined by the defence counsel at length. The precise contention raised by learned counsel for the petitioner for recalling these witnesses is the change of counsel and trial having been conducted through video conferencing during the corona period. The arguments raised by learned counsel for the petitioner are without any merit. The provisions of Section 311 Cr.P.C. are sacrosanct and liberal in nature, however, Hon'ble the Supreme Court has time and again laid down that the provisions of Section 311 Cr.P.C. are discretionary in nature. Hon'ble Supreme Court in the case of **Swapan Kumar Chatterjee vs. Central Bureau of Investigation**, (2019) 14 SCC 328 held as under:-

“11. 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 provisions of Section 311 Cr.P.C. can be invoked when it is necessary for the just decision of the case, however, the same cannot be invoked for filling up the loopholes in the case. In the case in hand all the prosecution witnesses have been cross-examined at length. As per the submission made by learned counsel for the petitioner itself, the case has reached at the stage of final arguments. The Court is to invoke the power

under Section 311 Cr.P.C. with circumspect. Though the provisions of Section 311 can be invoked at any time before the pronouncement of final judgment but the Court is to be conscious enough to see whether the application has been filed within a deliberate attempt to delay the trial. The present case deals with offence against a minor, which is pending trial from the last three years. The provisions of Section 33(5) of POCSO Act clearly enumerate that the Court should refrain from calling the victim to the Court repeatedly, thus this would show the intention of the legislature in providing speedy trial in the cases pertaining to sexual assault on the minors. Thus, weighing the facts and circumstances of the case on the anvil of the law settled, this Court finds no infirmity in the view taken by the learned trial Court. Resultantly, the petition being devoid of any merit is hereby dismissed.

19.7.2022
sharmila

(RAJESH BHARDWAJ)
JUDGE

Whether Speaking/Reasoned	:	Yes/No
Whether Reportable	:	Yes/No