

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

108

CRR-1503-2022

Date of decision :22.07.2022

HEM RAJ

...PETITIONER

Versus

STATE OF PUNJAB AND ANOTHER

...RESPONDENTS

CORAM: HON'BLE MR. JUSTICE SUVIR SEHGAL

Present: Mr. Darshan Singh Malwai, Advocate for the petitioner.

SUVIR SEHGAL, J.

Petitioner-accused has approached this Court by way of instant revision petition filed under Section 401 of the Code of Criminal Procedure, 1973 (for short – “the Code”) impugning order dated 05.07.2022, Annexure P-7, whereby application filed under Section 311 of the Code by the prosecution, has been accepted.

Facts, in brief, that are germane to the consideration of the instant petition are that FIR No.86 dated 01.06.2018 has been lodged at Police Station Sardulgarh, District Mansa, Annexure P-1, under Section 354-A, 509 of IPC and Sections 11, 12 of Protection of Children from Sexual Offences Act, 2012 (for short – “the POCSO Act”) on the allegation that

Master Hem Raj (present petitioner), who is a Teacher at Government Girls Secondary School, Sardulgarh has been teasing female students, inappropriately touching them and threatening them that in case they disclose the incidents, their names will be struck off. When the matter came to the notice of the parents, they took it up with the Principal, who sent Hem Raj on three day's leave. On 31.05.2015, when the girl students along with their wards went to the school, they found that the presence of Hem Raj was marked in the attendance register, though they were told that he has not come to School. It has also been alleged that Hem Raj has been punishing the girls by making them stand in the scorching sun in the heat of summer months and forcing them to succumb to pressure. Complaint has been given by the parents of the girl students, who have also signed the complaint that Hem Raj in connivance with the Principal of the school sexually harasses them.

During the course of the trial, the prosecution filed an application under Section 311 of the Code for summoning Jatinder Pal Kaur, the present Principal of the School as a prosecution witness along with the original record of time table of 10+1 Arts class for the academic session 2018-19 and subject wise result of the four complainant girl students and other relevant record. This application has been accepted vide order impugned herein.

While assailing the order, counsel for the petitioner has argued that it was never the case of the prosecution that the petitioner was teaching EVS (Environmental Studies) subject to the girls, who are students of 10+1 Arts and a new case is being introduced at the stage when the trial is fixed

for defence evidence. Still further it has been contended that CRR-2482-2019 has been instituted by co-accused, Jagmeet Kaur, which is pending and further proceedings qua her have been stayed by this Court and the trial Court should have awaited its outcome. Petition has been opposed by the State counsel by submitting that the witness and material sought to be produced is essential for the decision of the case and is necessary to show that although the petitioner was a Teacher of science subject but he had been given the duty of taking classes of Arts students also.

I have heard counsel for the parties and considered the material placed on the record.

Section 311 of the code confers wide power on the Court to summon any person as a witness or to examine any person in attendance though not summoned as a witness or re-call and re-examine already examined witnesses at any stage of inquiry, trial or other proceedings under the Code. This power has to be exercised with care and caution and the guiding principle is that it should be essential for the just decision of the case. It has been held by the Supreme Court in **V.N. Patil versus K. Niranjan Kumar and others, (2021) 3 SCC 661** that the aim of every Court is to discover the truth and Section 311 of the Code is one of many such provisions which strengthen the arms of a Court in its effort to unearth the truth by procedure sanctioned by law.

The facts of the present case have to be examined in the light of the settled legal position. By exercising power under Section 311 of the Code, the trial Court has permitted the prosecution to produce material to show that the accused petitioner was not only a Science teacher in the school

but during the academic session 2018-19 he had also been assigned the subject of EVS. The intention is to show that the petitioner has been teaching the girl students and taking their classes. The pendency of revision petition filed by co-accused Jagmeet Kaur, who was the Principal at the time of the incident, wherein she has challenged the order summoning her as an additional accused, is of no relevance. Still further, it deserves to be mentioned here that there is no change in the stand of the prosecution. Just by showing that the petitioner has been given the task of teaching a particular subject cannot be inferred as if the prosecution is trying to build up a new case. This Court is, therefore, of the view that the evidence and material is necessary for the just decision of the case and the fact that this application has been filed at a belated stage would not bar the prosecution from leading evidence to connect the accused with the offences, allegedly, committed by him. There is no illegality or impropriety in the order under challenge.

Finding no merit in the petition, it is hereby dismissed.

22.07.2022
sheetal

(SUVIR SEHGAL)
JUDGE

Whether Speaking/reasoned	Yes/No
Whether Reportable	Yes/No