

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

(121)

CRM-M-38946-2022
Date of Decision: 06.09.2022

Rekha Rani

--Petitioner

Versus

State of Haryana

--Respondent

CORAM:- HON'BLE MR. JUSTICE RAJESH BHARDWAJ.

Present:- Mr. Ritesh Pandey, Advocate for the petitioner.

RAJESH BHARDWAJ.J (Oral)

This is the second petition filed for setting aside the order dated 8.8.2022 vide which application moved under section 311 Cr.P.C for directing the complainant to give voice sample to be matched with the recording from the mobile phone of the petitioner/accused, was dismissed.

The petitioner had earlier approached this court by way of filing a petition i.e. CRM-M-36024-2022 with the similar prayer, however the same was dismissed as withdrawn vide order dated 18.8.2022.

Learned counsel for the petitioner has submitted that as the record regarding details of calls was older than one year which had already been destroyed by the company and hence the petitioner had approached this court again with a prayer for the same relief as this has given a new cause of action to him. He submits that the provision of Section 311 Cr.P.C is liberal in nature, whereas the learned Trial Court has failed to appreciate the same and thus has illegally rejected the same resulting in causing injustice to the petitioner. Counsel submits that the provisions of section 311 Cr.P.C allow summoning of the witnesses at any stage and hence the Trial Court has fallen in error in declining the same and hence the

impugned order deserves to be set aside.

I have heard learned counsel for the petitioner at length and have gone through the record carefully.

This court does not find any force in the arguments raised by counsel for petitioner. The impugned order specifically mentions that the complainant in her deposition did not deny her conversation with accused Nand Lal. This court does not find any change in circumstances from the situation which was existing at the time of withdrawing the first petition. Even otherwise, as per statutory provisions of section 33(5) of POCSO Act a victim cannot be compelled to come to the court repeatedly. There is no dispute regarding the provisions of section 311 Cr.P.C to be used liberally, however, the court has to be cautious in invoking its power under Section 311 Cr.P.C and examine if the application under Section 311 Cr.P.C has been filed to delay the trial. Besides this, Section 311 Cr.P.C can be invoked if it appears to be essential to the just decision of the case and not for plugging the loopholes in the case. There is no gainsaying that the court has been granted ample power under Section 311 Cr.P.C to prevent the injustice. The Hon'ble Supreme Court has laid down that the power under Section 311 Cr.P.C should be invoked only to meet the ends of justice. The power should be exercised for strong and valid reasons and it should be exercised with great caution and circumspection. Reliance in this regard can be placed in case of ***Swapan Kumar Chatterjee Vs. Central Bureau of Investigation 2019(14) SCC 328***. Section 311 Cr.P.C is reproduced hereunder:-

“311. Power to summon material witness, 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.”

Taking into consideration the arguments raised by counsel for the petitioner on the anvil of the law settled, this Court is of the opinion that the impugned order dated 8.8.2022, passed by learned Trial Court suffers from no illegality and resultantly the present petition being devoid of any merit, is hereby dismissed.

(RAJESH BHARDWAJ)
JUDGE

06.09.2022

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