

CRR No.1627 of 2021

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**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

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CRR No.1627 of 2021

Judgment reserved on 04.02.2022

Pronounced on :03.03.2022

Riya Batra

... Petitioner

Vs.

State of Haryana and others

... Respondents

CRR No.1632 of 2021

Riya Batra

... Petitioner

Vs.

State of Haryana and another

... Respondents

CORAM: HON'BLE MR. JUSTICE SUVIR SEHGAL

Present:- Ms. Kajal Saini, Advocate
for the petitioner in both cases.

Ms. Deepshikha Chauhan, AAG, Haryana
for respondent No.1.

Mr. Dhruv Gupta, Advocate
for respondents No.2 to 7 in CRR No.1627 of 2021 and
for respondent No.2 in CRR No.1632 of 2021.

SUVIR SEHGAL J.

This order shall dispose of two petitions, CRR No.1627 of 2021 titled as 'Riya Batra Vs. State of Haryana and others' and CRR No.1632 of 2021 titled as 'Riya Batra Vs. State of Haryana and another', as both the petitions have been instituted under Section 397 read with Section 401 of the Code of Criminal Procedure, 1973 (for brevity hereinafter referred to as “the Code”), impugning orders dated 08.11.2021, whereby,

applications under Section 311 of the Code, seeking recall of the prosecutrix for her re-examination, have been dismissed.

Factual background leading to the filing of the petitions is that FIR No.75 dated 03.09.2016 has been registered under Sections 3, 4, 7, 8 of Protection of Children from Sexual Offences Act, 2012 and Sections 294, 328, 506, 120-B of Indian Penal Code, 1860 at P.S.Women Ambala (Annexure P-1) on the statement of a 17 years old girl (for short “the prosecutrix”) on the allegation that she is a student of 10th class and in April 2014, she came in contact with Raghav, who is married and works in the electricity office. He asked her to be friends with him and on that pretext called her to his house, when he was alone, served her a cold drink and thereafter, she became unconscious and when she came to her senses, she found herself unclothed. On asking, she was told that he had made physical relations with her and promised to marry her. When she reacted, he threatened to release her video, which he had recorded and threatened to kill her. Few days later, Raghav introduced her to his colleague, Naresh, who sweet talked her and told her that he wants to marry her. Naresh called her to a temple, had a farcical wedding with her and brought her to Raghav's house, where he told her to have physical relations with him. Raghav and Naresh blackmailed her on the basis of recorded video and asked her to develop relations with Sandeep, who molested her and later dropped her at her home. Few days later, he forced her to get into relationship with Sahil, Vimal and Madan Lal, who continued to physically harass her. On 31.08.2016, at the behest of Madan Lal, she went with Lucky, who forcibly

took her into his car during the night to some fields, where he raped her and left her with his two friends. She has given the mobile number of Lucky and requested that action be taken against the accused. Her statement was recorded in the presence of a member of CWC Ambala, she was produced before the Magistrate and her statement under Section 164 Cr.P.C was recorded and she was medically examined. On the basis of allegations levelled by her, some accused were arrested and charged for offences under IPC and POCSO Act. During the course of proceedings before the Trial Court, she filed an application dated 25.08.2021 (Annexure P-3) for recalling herself for re-examination, which after contest by the accused, has been dismissed, vide order impugned herein.

I have heard counsel for the parties and examined the impugned order as well as the documents placed on the record with their able assistance.

Hon'ble Supreme Court in **Swapan Kumar Chatterjee Vs. Central Bureau of Investigation (2019) 14 SCC 328** has observed 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 wide 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.”

Following the said judgment, Supreme Court in **V.N.Patil Vs.**

K.Niranjan Kumar and others (2021) 3 SCC 661 held as under:-

“17. The aim of every Court is to discover the truth. [Section 311 Cr.P.C.](#) 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. At the same time, the discretionary power vested under [Section 311 Cr.P.C.](#) has to be exercised judiciously for strong and valid reasons and with caution and circumspection to meet the ends of justice.”

In the case in hand, although it has been vehemently urged that the prosecutrix was a minor, when her testimony was recorded by the Trial Court, but this star argument of the petitioner is found to be far from the truth. In her examination-in-chief recorded on 27.11.2017 (at page 36 of the paper book), the prosecutrix has given her date of birth as 14.09.1999 and produced her birth certificate, which has been exhibited as Ex.P3. She has been extensively cross-examined separately by the defence counsel for all the accused spread over five hearings and she has been throughout

consistent in her statement. There is nothing on the record to show that at the time, her examination was recorded and till the time she moved the application under Section 311 of the Code in August 2021, seeking her re-examination, there has been any pressure or threat to her. It deserves to be noticed that on the basis of her deposition recorded in the year 2017, an application under Section 319 of the Code, was filed and two co-accused, namely, Vimal and a juvenile were summoned as an additional accused and are facing trial. The examination-in-chief was recorded after they were summoned. Record shows that prosecution evidence has been closed on 25.02.2019 and the case is at the stage of defence evidence and arguments. Now at this stage, prayer to recall the prosecutrix, already examined more than 04 years earlier is nothing, but an attempt to delay the trial and the Court has no inhibition in holding that the application is an abuse of process of law.

Finding no merit in both the petitions, same are dismissed with no order as to costs.

(SUVIR SEHGAL)
JUDGE

March 03, 2022
savita

Whether Speaking/Reasoned	Yes
Whether Reportable	Yes