

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

(119)

CRR-2455-2022(O&M)
Date of Decision: 16.11.2022

Pawan

--Petitioner

Versus

State of Haryana

--Respondent

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

Present:- Mr. Akash Mehta, Advocate for the petitioner.

RAJESH BHARDWAJ.J (Oral)

CRM-43416-2022

This is an application seeking condonation of delay of 97 days that has occurred in filing the accompanying revision petition.

Learned counsel for the applicant-petitioner submits that the delay of 97 days that has occurred in filing the accompanying revision petition is totally unintentional and bonafide. He submits that after passing of the impugned order the requisite documents were given to the counsel for filing the revision petition, however, the petition was misplaced in his office and could not be found and thereafter it was found and filed. Counsel submits that on account of the same there occurred a delay of 97 days in filing the accompanying revision petition. He submits that petitioner would suffer an irreparable loss if the delay is not condoned.

In view of the submissions made by the counsel, present application is allowed. The delay of 97 days that has occurred in filing the accompanying revision petition is condoned.

Main Petition

The present revision petition has been filed impugning the

order dated 9.5.2022 passed by the learned Trial Court, whereby the application filed by the petitioner under Section 311 Cr.P.C for recalling PW-8 (prosecutrix) and PW-10 Joginder Singh, has been declined.

Learned counsel for the petitioner contends that the FIR in question was lodged on the statement of PW-10 Joginder Singh, who is the husband of prosecutrix. He submits that both prosecutrix and petitioner are of the age of majority and they were in consensual relationship. It is submitted that the prosecutrix was never happy with her husband and thus she voluntarily was in relationship with the petitioner. Petitioner and prosecutrix had been visiting number of places together voluntarily and they were in relationship for the last about 5 to 6 years. The prosecutrix used to send him Whatsapp messages also. It is submitted that statement of the prosecutrix and that of the complainant were recorded under section 161 Cr.P.C and the prosecutrix also made statement under section 164 Cr.P.C but while deposing before the Trial Court as PW-8 and PW-10 they made material improvements in their depositions which was totally contrary to the statements made during investigation. He submits that as the petitioner was behind bars, he could not advise his counsel regarding the relationship and thus changed the counsel as well. It is submitted that as both these material witnesses could not be cross-examined on material issues and hence both these witnesses deserve to be recalled for further examination by the new counsel. Counsel has submitted that the power under section 311 Cr.P.C granted to the court is unlimited and the same can be invoked at any time before the pronouncement of the judgement. He submits that the recalling of both these witnesses is necessary for the just decision of the

case but the learned Trial Court has failed to appreciate the same and hence drawn a wrong conclusion in declining the same. Counsel has relied upon the judicial precedents in cases of *Mannan Shiekh and others Vs. State of West Bengal and another (2014) 13 SCC 59*, *V.N. Patil Vs. K. Niranjan Kumar (2021) 3 SCC 661*, *Sarju Vs. State of U.P., (2009) 13 SCC 698* etc.

Counsel submits that the view taken by the learned Trial Court is totally contrary to the law settled by the Hon'ble Supreme Court in the aforementioned judicial precedents and hence the same deserves to be set aside and the petition filed by the petitioner for summoning both the aforementioned witnesses may be allowed.

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

Evidently the FIR in question was lodged by Joginder Singh i.e. husband of the prosecutrix. It was alleged that on 7.8.2019 at about 4'O clock his wife i.e. the prosecutrix left home for going to the market but thereafter she did not return. He searched her at every possible place but failed to trace her. A prayer was made to take legal action.

The investigation commenced and the investigating agency filed the challan under section 173 Cr.P.C. The learned Trial Court framed the charge and commenced with the examination of the witnesses. The prosecutrix was examined as PW-8 and the complainant Joginder Singh was examined as PW-10. After their complete examination the accused-petitioner filed a petition under section 311 Cr.P.C for recalling PW-8 and PW-10 for further examination. A perusal of the record would reveal that the statement of the prosecutrix (PW-8) was recorded on 12.3.2020 and she

was thoroughly cross-examined by the defence counsel. Similarly, husband of the prosecutrix PW-10 was also examined on 16.3.2021. Thereafter he was thoroughly examined by defence counsel namely Ms. Mani Chaudhary and Ms. Poonam Saini. Thereafter on 26.7.2021 the petitioner engaged a new counsel, who filed the application under section 311 Cr.P.C for recalling PW-8 and PW-10.

It is apparent from the record that the earlier counsel thoroughly examined the prosecutrix (PW-8) and gave suggestion to the witness that she had fallen in love with the accused-petitioner and wanted to take divorce from her husband. Thus the defence specifically put the question to the witness to be recalled for demolishing the case of the prosecution. For the appreciation of the issue involved in the case, 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.”

There is no dispute that the provisions of section 311 Cr.P.C are 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. However, in view of the law settled, it is apparent that 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*.

The primary emphasis of learned counsel for the petitioner is that the counsel was changed and hence that necessitates the recalling of the witnesses. The changing of the counsel would itself be no ground for recalling the witnesses if the defence has already availed the opportunity of cross-examination to their satisfaction. The case in hand pertains to the offence under section 376 IPC and the prosecutrix should not be compelled to be summoned to the court time and again when she already stands thoroughly cross-examined earlier. Similar is the position with regard to PW-10. The trial of the case is virtually at the fag end and this court finds that recalling of the aforementioned two witnesses is not necessary.

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 9.5.2022, passed by learned Trial Court suffers from no illegality and resultantly the present petition is hereby dismissed.

(RAJESH BHARDWAJ)
JUDGE

16.11.2022

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