

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

157

CRM-M-54963 of 2022
Date of decision:30.11.2022

Harpeet Singh

... Petitioner

Vs.

State of Punjab

... Respondent

CORAM: HON'BLE MR. JUSTICE SUVIR SEHGAL

Present:- Mr. Karan Bhardwaj, Advocate
for the petitioner.

SUVIR SEHGAL J.

By way of present petition filed under Section 482 of the Code of Criminal Procedure, 1973 (for short “the Code”), petitioner has approached this Court seeking quashing of order dated 31.10.2022 (Annexure P-1) passed by learned Additional Sessions Judge-cum-Fast Track Court, Ferozepur in case FIR No.17 dated 22.03.2022 lodged at Police Station Ghall Khurd, District Ferozepur for offences under Sections 450, 376, 506 of Indian Penal Code, 1860 (for short “IPC”), whereby, application filed by him under Section 311 of the Code to recall two prosecution witnesses, has been dismissed.

Case of the prosecution is that above mentioned FIR has been registered on the basis of a complaint given by M.K., mother of a 20 year old girl (hereinafter referred to as “the prosecutrix”), with a mental disability stating that when her daughter complained of stomachache, she conducted a pregnancy test and found that she was pregnant. On enquiry, her daughter

confided in her that Harpreet Singh, present petitioner, used to come to the

house in the absence of family members and under threat, raped her. Harpreet Singh was arrested on 22.03.2022. On conclusion of investigation, final report under Section 173 of the Code was submitted and offence under Section 452, IPC was deleted and Section 450, IPC was added.

Counsel for the petitioner has argued that examination of the material witnesses has been recorded in the absence of the accused. He urges that counsel for the petitioner was only permitted to ask three questions to the prosecutrix in cross-examination, which were formal in nature. It is his submission that proper opportunity to conduct cross-examination, has not been granted and with this objective, an application under Section 311 of the Code, has been moved seeking recall of both the prosecutrix as well as her mother, M.K.

Heard counsel for the petitioner.

It has been held by the Supreme Court in **Swapan Kumar Chatterjee Vs. Central Bureau of Investigation 2019 (14) SCC 328** that:-

“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 reexamination 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.”

Perusal of the interim order, Annexure P-19 appended with the paper-book shows that the accused, who is in custody, had been produced before the Trial Court and his presence is marked throughout when the prosecution witnesses, were examined. The minor prosecutrix as well as her mother were examined on 01.09.2022. Application seeking their recall was submitted by the petitioner on 29.09.2022 by which time the evidence of all the prosecution witnesses had been recorded. The reasons for the delay in moving the application has not been explained by the petitioner. Still further, it deserves to be noticed that the application itself is vague. It has been claimed that “new information about the progression case has come up which was not available at the time of examination of the victim and her mother”. However, the detail of any such information has neither been given in the application nor has it been explained during the course of arguments. There is nothing on the record to show that due opportunity was denied to the petitioner from cross-examining the witnesses. This Court is satisfied that the application has been moved at a belated stage with the intention to delay the trial which is at an advanced stage.

Keeping in view the judgment of Supreme Court, factual position as discussed above as also the fact that the petitioner is accused of a heinous offence on a minor, whose intellectual abilities are low, this Court is of the opinion that recalling the prosecutrix and her mother is merely an attempt to humiliate and harass them. Such an attempt deserves to be discouraged. This Court has formed an opinion that the application is malafide and has rightly been rejected by the Trial Court.

There is no illegality or impropriety in the impugned order passed by the Court below warranting interference in exercise of revisional jurisdiction. Consequently, finding no merit in the petition, it is ordered to be dismissed.

It is clarified that nothing said hereinabove shall be construed to be an expression of opinion on the merits of the case and the trial Court shall proceed and conclude the trial as expeditiously as possible in accordance with law without being influenced by any observation made hereinabove.

(SUVIR SEHGAL)
JUDGE

November 30, 2022
savita

<i>Whether Speaking/Reasoned</i>	<i>Yes</i>
<i>Whether Reportable</i>	<i>Yes</i>