

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

(125)

**CRR-2741-2022 (O&M)
DATE OF DECISION:- 13.12.2022**

AJIT GUPTA

...PETITIONER

VERSUS

STATE OF U.T., CHANDIGARH AND OTHERS

...RESPONDENTS

CORAM: HON'BLE MR. JUSTICE SUVIR SEHGAL

Present: Mr. Subhash Kumar, Advocate for the petitioner.

Mr. Yaswant Singh Rathore, Addl.P.P., U.T.Chandigarh
with Ms. Sudha Singh, Advocate and
Mr. Yuvraj Singh Rathore, Advocate
for respondent No.1-State.

Mr. Ajay Pratap Singh, Advocate
for respondents No.2 and 3.

SUVIR SEHGAL, J. (ORAL)

By way of present revision petition filed under Section 401 of the Code of Criminal Procedure, 1973 (for short “the Code”), petitioner has approached this Court seeking quashing of order dated 15.11.2022, whereby application, Annexure P-10, filed by him, under Section 311 of the Code seeking re-examination of the prosecutrix has been declined.

Facts, in brief, are that FIR No.141 dated 06.05.2019 has been lodged for offences under Section 376-C of the Indian Penal Code, 1860 and Section 6 of Protection of Children from Sexual Offences Act,

2012 (for short “the POCSO Act”) at Police Station Sector 31, Chandigarh, Annexure P-1, on the statement of a fifteen year old girl (hereinafter referred to as “the prosecutrix”), who is studying in ninth standard in a Government School at Chandigarh stating that she was taking tuition from Ajit Gupta, present petitioner. In the first week of April, when she went to his house for the purpose of tuition, there was no one else at home and he raped her. Thereafter, he asked her to leave and threatened her not to disclose the incident to anyone. She kept quiet out of fear. When she was taken to a hospital, doctors informed her mother that she was pregnant and she narrated the ordeal to her mother.

Counsel for the petitioner submits that after the examination of prosecutrix’s mother as DW-1, certain material questions have cropped up for which purpose prosecutrix is required to be recalled for her examination. It is his submission that the families of the prosecutrix as well as the petitioner are staying on rent in the same premises and after her father’s death on 16.05.2021, petitioner’s family has been taking care of her as well as that of her family and the dispute between the parties has been settled by compromise dated 12.12.2021, Annexure P-3, whereby it has been agreed that prosecutrix will be married to the petitioner as and when he is released.

Petition has been opposed by learned Additional Public Prosecutor, U.T., Chandigarh upon instructions received from ASI, Virendra, who submits that the petitioner is trying to take advantage of vulnerable situation of the prosecutrix’s family. It is his argument that the application is belated and has been moved after the closure of prosecution evidence on 23.09.2022. He has supported the impugned order.

Counsel representing prosecutrix-respondent No.2 as well as her mother-respondent No.3 has, however, supported the prayer made in the petition.

I have heard counsel for the parties and considered their respective submissions.

In *Ratanlal Versus Prahlad Jat and others 2017 (4) R.C.R. (Criminal) 410*, Supreme Court has held that power under Section 311 of the Code is to be exercised for strong and valid reasons with great caution and circumspection. Recall of a witness is not a matter of course and discretion given to the Court has to be exercised judicially to prevent failure of justice.

Prosecutrix was fifteen years of age when she was allegedly ravished by the petitioner, who is a mature young man. Even as of today, prosecutrix is a couple of months short of attaining majority. Allegations levelled in the FIR, Annexure P-1, have been duly supported by her in her statement under Section 164 of the Code as well as in her testimony recorded before the Trial Court on 27.08.2019. Prosecutrix has been consistent in her stand despite extensive cross-examination. After the death of her father, the petitioner's family seems to have won over the prosecutrix's mother. A Fixed Deposit of Rs.2 lacs, Annexure P-4, has been prepared in the name of the prosecutrix. Mother of prosecutrix has been examined as a defence witness and in her testimony, Annexure P-9, she has deposed in favour of the petitioner stating that it has been agreed between both the families that the petitioner will marry the prosecutrix and that the private respondents do not have any objection in case the petitioner is exonerated of the charge framed against him. It seems that the petitioner has managed to exploit the precarious financial position of

the prosecutrix’s family and won over her mother, and compromise arrived at between the parties is probably not voluntary, but under coercion and duress.

Keeping in view the facts and circumstances of the present case, this Court is of the opinion that the application for recall of the prosecutrix, which has been filed after more than three years of her examination, is not bona fide and rather, an abuse of the process of the Court and has been rightly declined by the Trial Court. Furthermore, Sub-Section 5 of Section 33 of the POCSO Act specifically provides that a child is not to be called repeatedly to testify in Court. The intention of the legislature is to protect the child, who is a victim of an offence under the Act, and to shield her from victimisation and harassment by repeated appearance in the Court.

There is no illegality or impropriety in the order passed by the Trial Court declining the application and it does not call for any interference in exercise of revisional jurisdiction by this Court.

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.

(SUVIR SEHGAL)
JUDGE

13.12.2022
Kamal

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