

HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

118-CRM-M-61102-2022

Date of Decision: 27.12.2022

Chetan Kumar

... Petitioner

VS.

State of Haryana

... Respondents

CORAM: HON'BLE MR.JUSTICE SANDEEP MOUDGIL

Present: Mr. Sandeep Kumar, Advocate for the petitioner

Sandeep Moudgil, J. (Oral)

The petitioner prays for setting aside of the order dated 07.12.2022 (Annexure P7) passed by the trial court in case FIR No.35 dated 30.01.2021 under Section 346 IPC (Section 376 IPC and Section 6 of POCSO Act, 2012 added later on), registered at Police Station Rai, District Sonapat (Annexure P1) vide which application filed by the petitioner for summoning the witness on behalf of the accused in defence evidence, has been dismissed.

Learned counsel for the petitioner contends that the case is now fixed for final orders on 03.01.2023. He also urged that the application for summoning the witness Hari Shankar Gupta, who is Principal of Durga Devi Junior High School, Rudain, District Badayun, Uttar Pradesh along with complete record of prosecutrix, is just and necessary for the fair disposal of the trial, which is pending before the court below.

Application of the petitioner has been dismissed on the premise that on an earlier occasion also, a witness was called for the same purpose, but the stand taken by counsel for the petitioner was that he had given up the witness which was not called by name as one Clerk/Record Keeper of the School appeared without records. It is under these peculiar circumstances to move the present application became necessary to prove the date of birth of the prosecutrix in the instant FIR which is the whole crux in this case.

Notice of motion.

On the asking of the Court, Mr. Gurmeet Singh, AAG Haryana accepts notice, who states that the above-said application has been moved by the petitioner only with a sole motive to delay the trial and despite the fact that on an earlier occasion also, similar opportunity was granted to the petitioner but he failed to produce any evidence, in that regard.

Be that as it may, looking into the seriousness and gravity of the offence, under trial before the court below, this Court is of the considered view that the impugned order dated 07.12.2022 (Annexure P7) is liable to be set aside.

In the light of the discussion made hereinabove and considering the aspect that the production of record will only be confined to proving the date of birth of the prosecutrix, as has been averred in the application for summoning of the said witness i.e. Principal of School, no prejudice is likely to be caused either to the accused or to the petitioner, in any manner, instead the same is likely to lead the trial to a logical conclusion while determining the age of prosecutrix.

Accordingly, the present petition is allowed and the order dated 07.12.2022 (Annexure P7) is quashed. Though it is made clear that the petitioner shall be granted one opportunity i.e. any next date fixed, by the trial court beyond 03.01.2023. The trial court is, therefore, directed not to pass any final order on 03.01.2023 without giving the petitioner prior opportunity to lead evidence, as prayed for in the application.

Ordered accordingly.

27.12.2022
V.Vishal

1. Whether speaking/reasoned?
2. Whether reportable?

(Sandeep Moudgil)
Judge

Yes/No
Yes/No