

CRR-468-2023 (O&M)

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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRR-468-2023 (O&M)

Date of Decision:- 26.05.2023

RAHUL

...Petitioner

Versus

STATE OF HARYANA AND ANOTHER

...Respondents

CORAM:-HON'BLE MS. JUSTICE AMARJOT BHATTI

Present:- Mr. Manraj Singh Toor, Advocate for the petitioner.

Ms. Mayuri Lakhanpal, DAG, Haryana.

AMARJOT BHATTI, J. (Oral)

CRM-16729-2023

The counsel for petitioner has filed an application under Section 482 Cr.P.C. for placing on record the copy of cross-examination of prosecutrix deposited before the Ld. Trial Court on 19.04.2022.

For the reasons enumerated in the application, the same is allowed and the accompanied document i.e. copy of cross-examination of prosecutrix deposited before the Ld. Trial Court is taken on record.

Application stands disposed of.

CRR-468-2023 (O&M)

1. The petitioner Rahul has filed the instant revision against order dated 21.12.2022 passed by learned Additional Sessions Judge, Special Court, Kaithal vide which application under Section 311 Cr.P.C. was declined. Feeling aggrieved of this order, present revision has been

preferred.

2. As per the facts of the case, Rahul is facing trial in FIR No. 357 dated 01.07.2021, under Sections 366, 367, 376, 384, 506, 201, 34 of the Indian Penal Code, 1860 and under Section 4 of the Protection of Children from Sexual Offences Act, 2012, Police Station City, District Kaithal. The FIR was lodged on the statement of prosecutrix alleging that about one year ago, she came in contact with Rahul through Instagram. She accepted his friend request and they were on talking terms with each other. At that time, she was still 17 years old and was studying. She received message from Rahul that he had saved her photographs from Instagram and compelled her to talk to him otherwise he will share those photographs on Facebook and Instagram to defame her. In January 2021, Rahul came to meet her at Kaithal. He took her to the house of his sister at Tohana and committed wrongful act with her against her wishes. She was threatened by him not to disclose about this fact to anybody. He started compelling her to marry him to which she refused. She turned 18 years on 12.06.2021 and on 23.06.2021, Rahul told her that he will come to Kaithal and will delete all her photographs. Rahul called her outside the house and assured to delete the photographs. Out of fear she came outside. Rahul had come in a black colour car. He forced her to sit with him and took her to Tohana. He showed some objectionable photographs to her. On the next day, one boy Sonu came, to whom Rahul addressed as *Jija ji* and he said that he would stay with her, whereas Rahul would go to find out some Mandir for marriage. The brother-in-law of Rahul also committed wrongful act with her. Rahul returned after three hours. She disclosed about the conduct of her brother-in-law but Rahul did not listen to her. They took her to Mandir and was forced to marry Rahul. Thereafter, she was taken to Sirsa in a

hotel. He again committed wrongful act with her. She informed her father on getting a chance. Thereafter, her parents came to Tohana to the house of brother-in-law of Rahul to take her back. Both Rahul and Sonu refused to send her alongwith her parents. She was brought back on 28.06.2021. Rahul had lodged a complaint with the police. She had disclosed to the police that she was going with her parents with her sweet will. With the aforesaid allegations, present FIR was registered.

3. During the pendency of the trial, the accused filed application under Section 311 of Cr.P.C. to recall the witness i.e. the victim for further cross-examination, which is Annexure P-14. In the said application, it is mentioned that inadvertently, the counsel for accused could not confront the witness on some vital points. He wanted to further cross-examine the witness on the ground that the complainant came in touch with the accused in July, 2020 and was frequently chatting with him on her mobile phone No. 9896326506 without any threat or pressure. Secondly, the prosecutrix left the house on 23/24.06.2021 night time and she had already called Rahul on phone. The call details with location of tower is required to be perused to find out the factual position. The statement of the prosecutrix was recorded under Section 164 Cr.P.C. where there was no allegation of rape. Lastly, the complainant filed Criminal Writ Petition No. 7291 of 2021 in the Hon'ble High Court and filed her affidavit attested by Oath Commissioner and the protection was granted vide order dated 05.08.2021. The prosecutrix is required to be recalled for further cross-examination on these points. Hence, the application.

4. The said application was opposed by prosecution and after hearing arguments advanced by learned counsel for the petitioner/accused and learned APP, the said application was declined vide detailed order

dated 21.12.2022. Feeling aggrieved of this order, present revision has been filed.

5. The learned counsel for the petitioner argued that the application under Section 311 Cr.P.C. has been dismissed without application of mind. The bare reading of FIR shows that petitioner was falsely implicated in this case by the parents of the complainant. The Marriage Certificate dated 24.06.2021 is Annexure P-1. The copy of protection petition CRM No. 29 dated 24.06.2021 is Annexure P-2 and copy of statement regarding withdrawal is Annexure P-3. The statements of the petitioner and the complainant were recorded in the said protection petition with the assurance that the couple will not harassed. The copies of statements are Annexures P-4 and P-5 and the joint statement of complainant and other respectables is Annexure P-6. Later on, a false FIR has been registered, which is Annexure P-7. The petitioner never committed any wrongful act with the prosecutrix. The parents of the petitioner took her to their house in a clever manner and forced her to register this FIR. The statement of prosecutrix was recorded under Section 164 Cr.P.C. which is Annexure P-11. No allegation was levelled at that moment. The marriage was performed on attaining the age of maturity. The prosecutrix was examined in this case but she could not be cross-examined on the points as referred in the application under Section 311 Cr.P.C. In order to decide the matter in a proper manner, the cross-examination of prosecutrix is required on the said points. Therefore, the impugned order passed by learned Additional Sessions Judge, Special Court, Kaithal may be set aside and the prosecutrix may be recalled for further cross-examination.

6. On the other hand, learned counsel representing the State opposed the application by alleging that the victim has already stepped

into the witness box as PW-2. She was cross-examined in detail. There is no valid reason to recall this witness for further cross-examination. The application under Section 311 Cr.P.C. was filed to harass the victim. Apart from the testimony of prosecutrix, there is medical record to confirm the allegations. This application was filed only to delay the proceedings of the trial. After considering all the facts, the application filed by the accused under Section 311 Cr.P.C. was rightly declined by passing order dated 21.12.2022. It is prayed that the revision preferred by the petitioner may be dismissed.

7. I have considered the arguments and have gone through the record carefully. As per record, the statement of prosecutrix was recorded as PW-2 on 19.04.2022 and she was cross-examined on the same day. The counsel for accused filed application under Section 311 Cr.P.C. to recall the prosecutrix for further cross-examination on 01.10.2022. There is no dispute about the fact that the Court can summon any material witness or examine any person at any stage of enquiry, trial or other proceedings under the Code of Criminal Procedure, 1973. The Court can further recall and re-examine any person already examined. Therefore, the counsel for accused could have filed application under Section 311 of Cr.P.C. to recall the prosecutrix for cross-examination.

In the application filed by the counsel for accused, it is mentioned that the prosecutrix was required to be cross-examined that she was in touch with the accused since July, 2020 or that she left the house on the intervening night of 23/24.06.2021 and it was she who had called Rahul on phone and the counsel for accused further wanted to cross-examine the prosecutrix regarding her statement recorded under Section 164 Cr.P.C. and lastly on the filing of Criminal Writ Petition No. 7291 of

2021 before the Hon'ble High Court. For the disposal of this application filed under Section 311 of Cr.P.C., I have carefully gone through the statement of prosecutrix as PW-2 as well as the detailed cross-examination conducted by learned counsel representing the present petitioner. The reading of her statement clearly indicates that the prosecutrix as PW-2 in her examination-in-chief conceded that she came in contact with Rahul about two years ago through a friend request on Instagram. The leaving of house on the intervening night of 23/24.06.2021 is further not disputed in this case. The statement of prosecutrix recorded under Section 164 Cr.P.C. was duly put to the witness and it is exhibited as Ex.P-2. The cross-examination of prosecutrix further indicates that she was cross-examined in detail regarding the protection petition filed by them before learned Additional Sessions Judge, Fatehabad. The witness was further cross-examined on the filing of Criminal Writ Petition No. 7291 of 2021. Therefore, the statement of prosecutrix indicates that the witness was cross-examined at length and he was fully aware of all the facts stated by the prosecutrix in examination-in-chief. Even otherwise, in case the petitioner wants to prove on record any other document, he can do so at the time of leading evidence in defence. Therefore, considering the aforesaid facts, the impugned order dated 21.12.2022 passed by learned Additional Sessions Judge, Special Court, Kaithal does not suffer from any illegality or irregularity. All the aspects of the application filed under Section 311 of Cr.P.C. have been dealt with in detail. Therefore, I do not find any reason to interfere in the impugned order dated 21.12.2022 and the same is accordingly, upheld. The revision preferred by the petitioner is accordingly, dismissed.

Pending application, if any, also stands disposed of.

26.05.2023
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(AMARJOT BHATTI)
JUDGE

Whether speaking/reasoned:	Yes
Whether reportable:	No