

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

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CRM-M-9338-2023 (O&M)
Date of Decision : 23.03.2023

Jyotsna Bhuchar

..... Petitioner

Versus

State of Haryana and another

..... Respondents

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present : Mr.Mukesh Mehra, Advocate
for the petitioner.

JAGMOHAN BANSAL, J. (Oral)

CRM-11693-2023

Prayer in this application is for placing on record the application under Section 311 of Cr.P.C. and order dated 24.01.2020.

Allowed as prayed for and the application under Section 311 of Cr.P.C. and order dated 24.01.2020 are taken on record subject to all just exceptions.

Registry is directed to tag the same at an appropriate place.

CRM-M-9338-2023

The petitioner through instant petition under Section 482 Cr.P.C, is seeking quashing of order dated 12.01.2023 whereby Additional Sessions Judge (Fast Track Court) Gurugram has dismissed application of the petitioner under Section 311 Cr.P.C. seeking examination of additional witnesses.

The petitioner lodged an FIR under Section 376/506 of IPC

against the respondent. *Challan* came to be presented and charges came to be framed against the respondent. The petitioner moved an application dated 18.01.2020 under Section 311 of Cr.P.C. seeking permission to examine Panditji and brother of prosecutrix to prove the factum of marriage of petitioner with accused-respondent. The application of the petitioner came up for consideration before ASJ, (Fast Track Court), Gurugram who vide speaking and reasoned order dated 24.01.2020 dismissed application of the petitioner. The trial Court returned the findings that the petitioner, on the one hand, is trying to prove that she is legally wedded wife of accused and on the other hand, she has lodged an FIR under Section 376 of IPC alleging commission of rape upon her.

After dismissal of aforesaid application, the petitioner moved another application dated 04.10.2022 seeking examination of Sandeep Bhardwaj i.e. brother of the accused and Ms. Bharti Bhardwaj, wife of Sandeep Bhardwaj to prove factum of marriage of the prosecutrix with the accused. The application came up for consideration before Additional Sessions Judge, Gurugram who vide impugned order dated 12.01.2023 has dismissed the application of the petitioner.

Learned counsel for the petitioner *inter alia* contends that the trial Court has wrongly dismissed application of the petitioner. The petitioner is duly wedded wife of the accused and brother of the accused as well as wife of his brother are best piece of evidence to prove factum of the marriage, however, trial Court in mechanical manner has dismissed application of the petitioner.

I have heard arguments of the learned counsel for the petitioner and perused the record.

The relevant extract of the order dated 12.01.2023 passed by Additional Sessions Judge (Fast Track Court) Gurugram read as :-

“Coming to the case in hand, the prosecutrix has moved the present application to examine Sh. Sandeep Bhardwaj i.e. brother of the accused Ajay Bhardwaj and Ms. Bharti Bhardwaj, wife of Sandeep Bhardwaj, so as to prove her marriage with the accused. The court cannot summon any person arbitrarily or at the whims of the prosecution. In fact, the court must exercise its power judicially, taking into account the entire documents and evidence, which already exist on the case file. Here, all the prosecution witnesses have been examined and in fact, the list of the prosecution witnesses is exhausted. The prosecutrix has given name of two more witnesses, which are allegedly essential to prove her marriage with the accused. After thorough perusal of the case file and the complaint Ex P17, the court was unable to find any reference where these persons were mentioned as witnesses to the alleged marriage between the prosecutrix and the accused. Not only this, the prosecutrix, when examined as PW1, herself disclosed about the details of the persons, who attended that marriage ceremony and even in her testimony as PW1, she did not mention that these persons namely Sh. Sandeep Bhardwaj and Ms. Bharti Bhardwaj were witnesses to the said marriage ceremony. The power conferred under Section 311, Cr.P.C. can be invoked by the court only in order to meet the ends of justice, for strong and valid reasons. But the same cannot be used as an opportunity either for the prosecution

or the accused, to create any evidence at any stage of trial. In these circumstances, when there is no reference of the said persons as witnesses to the marriage in question in the evidence so far produced before the court, they cannot be said to be essential witnesses/evidence in this case. Consequently, finding no merits in the present application under Section 311, Cr.P.C., the same is hereby dismissed.”

From the perusal of findings recorded by trial Court, it comes out that the trial Court has passed a speaking and reasoned order. The trial Court, on the earlier occasion, has dismissed application filed by the petitioner under Section 311 of Cr.P.C., the object of which was same as was in the 2nd application under Section 311 of Cr.P.C. It appears that the petitioner is filing repeated applications to prove that she is duly wedded wife of the accused. It is apt to notice here that the petitioner has lodged an FIR against accused under Section 376 of IPC where she is attempting to prove that the accused has committed rape upon the petitioner whereas she is attempting to prove that she is a legally wedded wife of the accused. Name of brother of accused as well his wife was not disclosed in the FIR. The police after conducting investigation has filed *challan*. The petitioner, during the course of investigation, did not disclose the name of brother of respondent and his wife. Both of them were not cited as witnesses. The petitioner is claiming that they had attended marriage. This fact was well within her knowledge at the time of filing the first application under Section 311 of Cr.P.C. where she was asking for summoning of Panditji and her brother. She failed to get favourable order with respect to examination of Panditji and her brother and moved another application seeking

examination of brother of accused as well as his wife. The prosecutrix was examined as well as cross-examined during the course of trial, however, she did not disclose factum of presence of brother of accused and his wife at the time of alleged marriage.

In view of above facts and circumstances, no ground is made out to interfere in the impugned order. The present petition deserves to be dismissed and accordingly dismissed.

(JAGMOHAN BANSAL)

JUDGE

23.03.2023

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Whether speaking/reasoned	Yes/No
<i>Whether Reportable</i>	<i>Yes/No</i>