

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

CRM-M-16586-2023 (O&M)

Date of decision:-19.04.2023

Amit Kumar

...Petitioner

vs.

State of U.T. Chandigarh & Another

...Respondents

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present: Mr. Deepanshu Matya, Advocate for the petitioner.

Mr. Abhinav Gupta, Additional P.P., UT, Chandigarh

HARKESH MANUJA, J.

1. By way of present petition filed under Section 482 Cr.P.C., prayer has been made for quashing the impugned order dated 21.09.2022 passed by Ld. Judge, Fast Track Special Court, Chandigarh, vide which application filed by the petitioner invoking Section 311 Cr.P.C. in case arising out of FIR No. 22 dated 27.02.2022 under Sections 377 & 506 IPC & 5(i), 5(m), 6 POCSO Act, registered at Police Station Maloya, Chandigarh, has been dismissed.

2. Brief facts of the case are that on a complaint made by respondent No 2 at Police Station Maloya, Chandigarh against the petitioner of having allegedly sodomized her 9 year old minor son, FIR No. 22 dated 27.02.2022 under Sections 377 & 506 IPC & 5(i), 5(m), 6 POCSO Act was registered. Final report under Section 173 Cr.P.C. was filed on 14.04.2022 after which petitioner was subjected to the trial before Ld. Judge, Fast Track Special Court, Chandigarh. Statement of

complainant was recorded as PW3 on **01.06.2022** while the statement of her son was recorded as PW5 on 07.07.2022. Thereafter, the petitioner moved an application u/s 311 Cr.P.C. for recalling the prosecution witnesses i.e. complainant and the victim for further cross-examination, but the same was dismissed vide impugned order dated 21.09.2022

3. By way of present petition, prayer has been made for quashing the order dated 21.09.2022.

4. Learned counsel for the petitioner submits that a bare perusal of the cross examination of both the material witnesses, PW3 & PW5, shows that many questions which were required to be asked were never put to them by the previous counsel representing the petitioner/ accused. Furthermore, a video is required to be put to the complainant to prove the innocence of the petitioner which was never put to him by the earlier counsel. He further submits that even otherwise, fresh facts have come forth before the petitioner/accused in shape of affidavits dated 22.03.2022 and 18.07.2022 furnished by the complainant to the effect that the petitioner was having no role to play in the alleged incident/offence and this fact was disclosed to her by her minor son Prince/victim and in that circumstance, PW3 and PW5 were required to be recalled for cross-examination. He argues that Ld. Court below wrongly recorded that some compromise has been effected; rather the complainant has falsely implicated the petitioner to extort money. Learned counsel lastly submits that it is settled law that court should be magnanimous in permitting mistakes to be rectified so that

best evidences are on record and the matter is concluded for once and all.

5. On the other hand, learned State counsel submits that petitioner earlier preferred a revision petition CRR- 2130-2022 against the order dated 21.09.2022, however, he withdrew the same with liberty to file fresh with better particulars. He also submits that petitioner also preferred petition bearing CRM-M- 48889-2022, for quashing of the FIR on the basis of compromise between the parties; but the same was also withdrawn by the petitioner with liberty to file fresh with better particulars vide order dated 24.03.2023, however instead of that, present petition has been filed. On merits, learned State counsel submits that change of counsel cannot be a valid ground to recall the witnesses when they were duly examined by the petitioner's counsel and this application is nothing; but a tactic to circumvent the prosecution and therefore, learned Court has rightly dismissed the same.

6. I have heard learned counsel for the parties and gone through the paper book of the case. I also had a careful look at the order dated 21.09.2022 passed by Ld. Judge, Fast Track Special Court, Chandigarh, and I do not find any substance in the arguments raised by learned counsel for the petitioner.

7. Reliance has been rightly placed upon **“A.G. Vs. Shiv Kumar Yadav and another”** 2015, Criminal Law Reporter (SC) 1007 to hold that change of counsel can never be a ground for recalling of witnesses and this if allowed, would open the flood gates for such like applications. This judgment has been followed by a co-ordinate Bench

of this Court in "**Satnam Singh vs Surjit Singh**" bearing no. CRR-413-2018 decided on 03.05.2019. In view of these judgments, application has rightly been dismissed because if application filed under Section 311 is allowed on the basis that previous counsel did not ask all the relevant questions and/ or a fresh affidavit has been filed by the complainant, it would give a tool at the hands of accused person(s) to unnecessarily delay the trial by changing the counsel on regular intervals.

8. Submission regarding subsequent affidavit of the complainant and requirement of recalling for cross examination on that account also does not satisfy the test of rationality. As complainant has already recorded her statement on oath before the court and witnesses cannot be recalled time and again on account of their statement made anywhere else unless in view of the court, it is deemed necessary. Further, no details have been specified under what circumstances this affidavit was prepared. Similarly with respect to some video as well, no detail has been provided regarding its contents and how it is relevant in the present case and merely a vague averment has been made that is required to be shown to the complaint. In **Satnam Singh's** case (supra) it was also observed that vague averments in the application would not justify acceptance of an application under Section 311 Cr.P.C.

8. In these circumstances, the concern expressed by the learned Court gets significance that petitioner has probably compromised the matter with the complainant, which is also fortified from the fact that petitioner preferred a petition bearing CRM-M-

48889-2022 for quashing of the FIR on the basis of compromise between the parties; but the same was withdrawn by the petitioner with liberty to file fresh with better particulars vide order dated 24.03.2023. It is pertinent to mention here that this fact was not mentioned in the petition anywhere and rather, it has been brought to the notice of this Court by the learned State Counsel. In case, all these circumstances are taken into account, there appears to be an attempt on behalf of petitioner to circumvent the proceedings before the learned trial Court.

9. More than that, the present petition arises out of a trial in FIR pertaining to the provisions involving POCSO Act, wherein the Legislature casts an obligation under Section 33(5) of the POCSO Act to ensure that the child is not called repeatedly to testify in the Court. Under similar circumstances, this Court in its decision dated 04.02.2022, passed in CRR-167-2022, titled as "**Balkar vs. State of Haryana**" refused to interfere with the rejection of prayer made for recalling of witness by the trial Court. Relevant portion from para 6 of the aforementioned judgment is reproduced hereunder:-

".....Even otherwise the victim being a minor cannot be called time and again as per Section 33(5) of the POCSO Act, 2012. The observation of the learned trial court that the application has been filed deliberately due to some kind of compromise between the parties, cannot be ignored. There is no gainsaying that the court has been granted ample power under Section 311 Cr.P.C. to prevent the injustice. However, in view of the law settled, it is apparent that the Hon'ble Supreme Court has laid down that the power under Section 311 Cr.P.C. should be invoked only to meet the ends of justice. The power should be exercised for strong and valid reasons and it should be exercised with great caution and circumspection....."

10. In view of the discussion held above, this petition is dismissed as no interference is warranted in the order dated 21.09.2022.

11. Pending miscellaneous application(s), if any, shall also stand disposed of.

19.04.2023
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(HARKESH MANUJA)
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No