

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

CRR-1550-2023 (O&M)

Date of Decision: July 06, 2023

Manoj Kumar

... Petitioner

Versus

State of Haryana

... Respondent

CORAM: HON'BLE MR. JUSTICE VIVEK PURI

Present: Mr. G.C. Shahpuri, Advocate,
for the petitioner.

Vivek Puri, J.

CRM-27326-2023

1. This is an application for condonation of delay of 20 days in filing the revision petition.

2. For the reasons recorded in the application, same is allowed. Delay of 20 days in filing the revision is condoned.

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3. The petitioner has assailed the order dated 15.03.2023 passed by the learned trial Court vide which the application under Section 311 of the Code of Criminal Procedure (for short the `Code`) filed by the petitioner for recall of three PWs for re-cross-examination, has been dismissed.

4. Learned counsel for the petitioner contends that the petitioner has been arraigned as an accused in the case bearing FIR No. 132, dated 31.03.2022, under Sections 323, 376 of the Indian Penal Code and Sections 10, 18, 4, 6 of the Protection of Children from Sexual Offences Act, 2012 (for short the 'Act'), registered at Police Station Gandhi Nagar, District Yamuna Nagar. The FIR has been registered at the instance of one of the daughters of the petitioner raising allegations of commission of penetrative sexual assault upon her, as well as, another daughter of the petitioner. Both the victims have been examined during the course of trial as PW2 and PW3. The petitioner is seeking their recall along with another witness on the score that the victims and their mother had been quite often visiting the jail to meet the petitioner. The petitioner has been falsely implicated at the instance of landlord and other neighbours.

5. I have heard learned counsel for the petitioner.

6. Section 311 of the Code enables the Court with the power to summon, recall and re-examine any witness, who has already been examined. The section confers a wide discretion on the Court to act as the exigencies of justice and the circumstances of the case may require. The Court can recall a witness in the event, the further examination of the witness appears to be essential for the just decision of

the case. However, it has also to be borne in mind that such power cannot be exercised to permit any of the parties to fill up lacuna in its case. There must be sufficient and reasonable material to justify for exercise of the discretionary power vested in the Court. Even the mistake or lapse on the part of the defence counsel without any significant and substantial material cannot be termed to be circumstance to justify the recall of witnesses in each and every case.

7. On advertng to the merits of the present case, it is significant to note that both the victims are less than 18 years of the age and the allegation of commission of penetrative sexual assault has been attributed against the petitioner, who is their father. The statement of the victims and PW9 who has also been sought to be recalled, have already been recorded during the course of trial. There is nothing to indicate that full and effective opportunity was not afforded to the petitioner for cross-examination of the witnesses. Merely because the victims along with their mother had been visiting the petitioner in jail for the purpose of meeting, cannot be construed as a circumstance to conclude that the petitioner has been falsely implicated by the victims at the instance of the landlord and the neighbourers. The petitioner was well aware of the case which he was required to project and build during the

course of trial. In the event, the victims or any other witness were required to be cross-examined on the aspect that they had been visiting the petitioner in jail, the same could have been conveniently done at the earlier stage when their statements were recorded and the petitioner was afforded full and effective opportunity to cross-examine the witnesses. There is nothing on record to indicate as to what prevented the petitioner from cross-examining the witnesses on that aspect of the matter.

8. It shall be appropriate to mention here that the victims are less than 18 years of age and the allegations are also with regard to the commission of offence under the penal provision of the Act and furthermore, as per the provisions of Section 33(5) of the Act, the Special Court has to ensure that the child is not called repeatedly to testify in the Court.

9. In these set of circumstances, no illegality or irregularity is made out in the impugned order, which may warrant interference by this Court.

10. Instant petition is dismissed accordingly.

July 06, 2023
vkd

(Vivek Puri)
Judge

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