

2023:PHHC:104206

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

CRM-M-39362-2023 (O&M)

Date of Decision: 10.08.2023

RUPESH KUMAR

... PETITIONER

VS.

STATE OF PUNJAB AND OTHERS

.. RESPONDENTS

CORAM: HON'BLE MR. JUSTICE VIVEK PURI

Present : Mr. Manoj K. Sharma, Advocate
for the petitioner.

VIVEK PURI, J.(ORAL)

1. The petitioner has assailed the order dated 11.07.2023 passed by the learned trial Court vide which the application under Section 311 of Code of Criminal Procedure has been dismissed.

2. The petitioner has been arraigned as an accused in the case bearing FIR No.63 dated 26.05.2020 under Sections 363, 366-A IPC and Section 4 of the POCSO Act and Section 376 IPC added later on registered at Machhiwara, District Khanna (Ludhiana).

3. The petitioner is seeking to recall the victim and her parents for further cross-examination on the score that at the earlier instance, the legal aid counsel was provided to the petitioner, who had not effectively cross-examined the witnesses. Subsequently, the petitioner had engaged another counsel and, accordingly, recall of the witnesses has been sought.

4. Learned counsel for the petitioner contends that even the father of the victim had submitted the reply stating that he has no objection if the application is allowed.

5. 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.

6. The reason assigned for recall of the witness is to the effect that the earlier counsel engaged by the petitioner has not effectively cross-examined the witnesses on all the material aspects of the case. Significantly, the change of counsel in the instant case cannot be permitted to be a circumstance to recall the witnesses particularly because there was sufficient time gap and full opportunity was afforded for the effective cross-examination of the witnesses. Moreover, if recall of witnesses on such ground is permitted, it can result in repeated recall the witnesses with the subsequent change of counsel. Furthermore, in the event the father of the victim has no objection for recall of the witness, it cannot be termed to be a circumstance to recall the witness if the same is not permissible, in accordance with law.

7. On a query, learned counsel for the petitioner has not disputed the fact that the effective opportunity to cross-examine the witnesses, already examined, has been afforded to the petitioner. It has not been specified as to on which significant aspect, the witnesses have not been cross-examined. Consequently, the recall of the witness in the instant case

does not appear to be essential for the just decision of the case.

8. It shall be appropriate to mention here that the victim is less than 18 years of age, the allegations are with regard to the commission of offence under Section 4 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.

10.08.2023
smriti

(VIVEK PURI)
JUDGE

Whether speaking/reasoned	: Yes/No
Whether Reportable	: Yes/No