

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH**124****CRM-M-47515-2023(O&M)****Date of decision: 11.10.2023****Jai Bharat****...Petitioner(s)****Vs.****State of Haryana & Another****...Respondent(s)****CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA**

Present: - Mr. Piyush Aggarwal, Advocate
for the petitioner.

NIDHI GUPTA, J.

Prayer in the present petition filed by the petitioner/accused aged about 33 years, is to set aside order dated 18.08.2023 (Annexure P7) passed by learned Additional Sessions Judge (Fast Track Court), Gurugram, in case FIR No.69 dated 14.02.2018 under Sections 323, 354D, 376 and 506 IPC registered at Police Station Sector 14, Gurugram whereby application dated 11.05.2023 (Annexure P5) filed by respondent No.2/prosecutrix under Section 311 Cr.P.C. has been allowed.

2. Learned counsel for the petitioner inter alia submits that the learned trial Court was in patent error in allowing the above said application filed by respondent No.2 in view of the fact that the prosecution evidence has been concluded. It is submitted that examination-in-chief of the complainant/victim was recorded as long back as four years ago and therefore, application filed by respondent No.2 under Section 311 Cr.P.C. could not be allowed at this belated stage. It is further submitted that vide the said application under Section 311 Cr.P.C., the prosecution is seeking to bring on record call recordings dated 24.01.2018 and 05.02.2018

which pertained to the period prior to registration of the present FIR, and therefore, the same have no relevance to the present case. It is further contended that the said record is also time barred as not only does it pertain to the period prior to registration of the FIR, but also because the prosecution evidence has been closed. Learned counsel further submits that present application filed by the complainant is merely an endeavour to delay trial and fill lacunae in the case. It is submitted that grave injustice and prejudice would be caused to the petitioner if the impugned order is upheld.

3. No other argument is made on behalf of the petitioner.

4. I have heard learned counsel for the petitioner.

Brief facts of the case as set out in the FIR, are as follows:—

*“...I am 26 years old. I met Jai Bharat s/o Kuldeep Singh, R/o Jind Narwana in 2014, but at that time there was no friendship between us. From July 2015 he started developing friendship. Then for the first time in October, he committed wrong act with me. On the pretext of love, he tried to keep me and being not agreeing peacefully, he on extension of threats of slander and misbehaviour, kept with him, even flatly refused from marriage. He used to get me to buy things for himself and for his brother by influencing me in talks. Earlier I did not have the courage to tell anyone and now somehow when I dared to separate from him, he broke my courage and misbehaved with me but I kept on daring. The incidents after that are as follow:
14 JAN: He came outside my office and took me away forcefully. Several times that week, he used to stalk me outside my office in the dark. Hit me in the market of Sector – 14. 20*

JAN: Slapped me by sitting me in his car. In order to kill my colleague (Chittaranjan), he took out the car on the road (ROD) and started going towards my office. When I tried to stop, he hit me more and threatened to do very inhuman acts. I sacredly said that I will stay with you. Thereafter on 23rd Jan: He was stood outside my office in hide, then hit me and tried to misbehave by taking me to the market. 25th Jan: He came inside my office against my will. I tried to call the police by dialling 100 number twice (at 4 and 4.12) but the police did not come. 1 FEB: Came out of my office without informing me and then came inside and also created ruckus and hit me and Chitranjan. Then he reached my house. Threatened to throw acid on me in front of my family members. Threatened me that my hands and feet would be chopped off. Then kept calling and messaging continuously for a long time. Came to my office again on 09 FEB when I had left the job. He was standing in front of my house. Next day messaged to scare me that I am out. On SUNDAY 11 FEB my COUSIN Dev Kanti Das, age 16 years) came to my house without telling me, without ringing the bell, came inside till the door. I came to the police station with my father, Alok Das, and in front of LEGAL ADVISER Ms. Munmum, herself has got recorded. LEGAL ADVISER ATTESTED MUNMUM 13.02.18 Father-ALOK DAS 13.02.18 Prachi Dass D/o Alok Dass R/o 3591, Sec-23, Gurgaon – 9910427768”.

5. Perusal of record of the case reveals that the prosecutrix in her deposition as PW6 on 14.01.2019 (Annexure P3) has stated as follows:-

“....On 24.1.2018 I telephonically conveyed Jai Bharat that I continued my relationship with him until unless he will marry me and come to talk to my parents for our marriage. On this

conversation he promised that he will marry me and wanted to meet me asking me to come out from my office which I did not. I was insisting him to come and to talk with my father on my our marriage proposal. When he promised in thi9s (sic) conversation to me but in the evening of this day he did not come to meet my father on this day. In the night Nav bharat sent me a text message saying that Jai Bharat has fainted in his office. I did not reply this message.

On 25.1.2018 both Jai Bharat and Nave Bharat started calling me on telephone and when I did not respond they started sending message that it was urgent. Jai Bharat text me that he will come to my office which I declined but later Jai bharat came to my office at about 4.00 PM and when I saw him coming inside my office I called 100 number to call the police. Jai Bharat in the intervening time was trying to take me in his car to go his house. Police did not arrive I again called 100 number when police informed that PCR is on the way. Jai Bharat tried to assault me in the office which I was saved by my colleague and staff members. At 4.30 PM Jai Bharat left my office giving me threatening to ruin my life. At 4.45 PM the same day of 25.1.2018 I received a call from Police station Sector-14 Gurugram asking me about the incident which I detailed but police did not take any action. My father advised not to go to the police because of the connections of Jai Bharat.”

6. From the above facts, it transpires that the petitioner and the complainant were in a relationship. It has been alleged that as the petitioner refused to marry the complainant, she registered the present FIR stating therein that she had known the petitioner since 2014. In October 2015, the petitioner is alleged to have done wrong act with the complainant whereafter the complainant broke off the relationship.

Thereafter, the petitioner used to stalk, abuse and threaten the complainant. It is my considered opinion that from a bare perusal of the above said deposition, in context of the above facts, it is clear that the evidence sought to be brought on record by the prosecutrix i.e. the call recordings and transcripts of the calls dated 24.01.2018, and call dated 25.01.2018 between the petitioner and the prosecutrix, as well as certificate under Section 60 5B of the Indian Evidence Act, are very much pertinent for the proper adjudication of the present case.

7. Section 311 Cr.P.C. stipulates as below:-

“Any court may, at any stage of my enquiry, trial or other proceeding under this code, summon any person as a witness, or examine any person in attendance, though not summoned as a witness, or recall and re-examine any person already examined; and the court shall summon and examine or recall and re-examine any such person if his evidence appears to it to be essential to the just decision of the case”.

8. As noted above, the prosecutrix in her testimony has categorically stated that on 24.01.2018, she had conveyed the petitioner on telephone that she would not continue her relationship with him unless he married her. Thereafter, even on 25.01.2018, it has been stated that the petitioner and his friend called the prosecutrix on telephone and when she did not respond, they started messaging her. It is my considered view that the above said evidence in the form of telephonic conversation between the prosecutrix and the petitioner as also the transcripts of these calls are material to the issue at hand and form necessary evidence for the proper adjudication of the matter. Moreover, learned trial Court has further

recorded that the prosecutrix/PW6 is only seeking to produce documentary evidence in support of her allegations.

9. Reliance may be placed on judgment of Hon'ble Supreme Court in **"Rajaram Prasad Yadav Vs. State of Bihar & Another"**

Law Finder Doc ID # 461433, wherein it has been held as follows:-

"14. A conspicuous reading of Section 311 Criminal Procedure Code would show that widest of the powers have been invested with the Courts when it comes to the question of summoning a witness or to recall or re-examine any witness already examined. A reading of the provision shows that the expression "any" has been used as a pre-fix to "court", "inquiry", "trial", "other proceeding", "person as a witness", "person in attendance though not summoned as a witness", and "person already examined". By using the said expression "any" as a pre-fix to the various expressions mentioned above, it is ultimately stated that all that was required to be satisfied by the Court was only in relation to such evidence that appears to the Court to be essential for the just decision of the case. Section 138 of the Evidence Act, prescribed the order of examination of a witness in the Court. Order of re-examination is also prescribed calling for such a witness so desired for such re-examination. Therefore, a reading of Section 311 Criminal Procedure Code and Section 138 Evidence Act, insofar as it comes to the question of a criminal trial, the order of re-examination at the desire of any person under Section 138, will have to necessarily be in consonance with the prescription contained in Section 311 Criminal Procedure Code. It is, therefore, imperative that the invocation of Section 311 Criminal Procedure Code and its application in a particular case can be ordered by the Court, only by bearing in mind the object and purport of the said provision, namely, for achieving a just

decision of the case as noted by us earlier. The power vested under the said provision is made available to any Court at any stage in any inquiry or trial or other proceeding initiated under the Code for the purpose of summoning any person as a witness or for examining any person in attendance, even though not summoned as witness or to recall or re-examine any person already examined. Insofar as recalling and re-examination of any person already examined, the Court must necessarily consider and ensure that such recall and re-examination of any person, appears in the view of the Court to be essential for the just decision of the case. Therefore, the paramount requirement is just decision and for that purpose the essentiality of a person to be recalled and re-examined has to be ascertained. To put it differently, while such a widest power is invested with the Court, it is needless to state that exercise of such power should be made judicially and also with extreme care and caution". (Emphasis supplied).

10. Accordingly, keeping in view the above said facts and importance and context of the evidence being sought to be led by the prosecutrix, I find no error in the impugned order. Present petition accordingly stands **dismissed**.

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

11.10.2023

Sunena

(Nidhi Gupta)
Judge

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No