

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

111

CRR-2115-2023 (O&M)

Date of decision: 21.09.2023

Deepak @ Rajan

...Petitioner(s)

Vs.

State of Haryana

...Respondent(s)

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present: - Mr. Abhimanyu Singh, Advocate
for the petitioner.

Ms. Deep Shikha Chauhan, AAG Haryana.

NIDHI GUPTA, J.

Present petition is filed against order dated 06.09.2023 passed by learned Additional Sessions Judge, Bhiwani in Sessions Case No.238/2022 (instituted on 28.09.2022) titled as "State Vs. Deepak @ Rajan" whereby application filed by the petitioner under Section 311 Cr.P.C. for recalling PW5 (child-victim) and PW6 (mother of the child-victim) has been dismissed.

2. Learned counsel for the petitioner inter alia submits that admittedly, the child-victim in her evidence has supported the case of the prosecution, however, now she wants to resile from her previous statement. Accordingly, the petitioner had filed an application under Section 311 Cr.P.C. for recalling the prosecutrix and her mother for further cross-examination. It is submitted that in view of the above said fact, further cross examination of the prosecutrix and her mother was vital for

proper adjudication of the present matter and therefore, learned Court below was in patent error in dismissing the petitioner's application. It is submitted that grave injustice will be caused to the petitioner if the present petition is not allowed.

3. Learned counsel further submits that application of the petitioner under Section 311 Cr.P.C. deserves to be allowed also in view of the fact that prosecutrix is willing to depose again and there are certain questions which were not earlier put to the prosecutrix and her mother, which are necessary for the effective and proper adjudication of the matter.

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

5. I have heard learned counsel for the petitioner.

6. Perusal of record of the case shows that the only ground cited by learned counsel for the petitioner before this Court for seeking re-examination of the prosecutrix and her mother is that, now the prosecutrix wants to resile from her previous statement and prosecutrix is willing to depose again. However, the said assertion of the petitioner, as made in Paras 5 and 9 of the petition, are not supported by any affidavit.

7. Be that as it may, even perusal of application filed by the petitioner under Section 311 Cr.P.C. (Annexure P8) shows that a totally different ground has been taken therein for re-examination of the prosecutrix and her mother. It has been averred in para 3 of the said application that *"...the father of the accused/ applicant remains ill and brother of the accused/ applicant, hence the family members of the accused/ applicant could not engage his counsel to defend the present case.*

Due to non engage the counsel on behalf of the accused/ application, legal aid counsel was provided to the accused/ applicant but that counsel has not properly defend the case of the accused/ applicant and some important question were not put to the above said witnesses...”

8. Therefore, clearly the ground on which the examination of the prosecutrix and her mother was sought before the learned trial court was that the legal aid counsel provided to the petitioner had failed to put certain important questions to the above said witnesses. No such ground as pleaded in the present petition was taken by the petitioner before the court below. As such, the reasons given by the petitioner for seeking re-examination of the prosecutrix and her mother are at variance, if not contradictory and therefore, affirm the observation of the learned Court below in the impugned order that the petitioner had moved the instant application only to delay the proceedings of the case.

9. It has also been submitted that the said application (Annexure P-8), as well as the present petition do not mention any question or point on which the petitioner wants to cross examine the victim and her mother as the petitioner does not want to disclose the said questions.

10. Moreover, record further bears out that the prosecutrix and her mother were examined on 18.03.2023 in the presence of Legal Aid Counsel for the petitioner. Admittedly, Legal Aid Counsel for the petitioner had cross-examined the prosecutrix and her mother at considerable length. Thereafter, after about five months, the present application under Section 311 Cr.P.C. was moved on behalf of the petitioner on 14.08.2023.

11. It is also the considered view of this Court that it is imperative to be sensitive to the situation of the child-victim who cannot and ought not to be made to repeat/again re-live the harrowing events unless absolute reasonable cause is made out. Even as per the Act, the child-victim cannot be called repeatedly for deposition. In the present case, I find no reasonable cause is made out that justifies the recalling of the prosecutrix and her mother.

12. Accordingly, I find no ground is made out to interfere in the impugned order. Present petition accordingly stands **dismissed**.

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

21.09.2023

Sunena

(Nidhi Gupta)

Judge

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No