

In the High Court for the States of Punjab and Haryana at
Chandigarh

CRR-2088-2023 (O&M)

Date of Decision: September 19, 2023

Rahul

... *Petitioner*

Versus

State of Haryana

... *Respondent*

CORAM: HON'BLE MR. JUSTICE VIVEK PURI

Present: Mr. Satender Kumar, Advocate,
for the petitioner.

Vivek Puri, J.

1. The petitioner has assailed the order dated 22.08.2023 passed by the learned trial Court, vide which the application submitted by the petitioner under Section 311 of the Code of Criminal Procedure (for short 'Code') for recall of the prosecutrix and her mother (PW1 and PW2, respectively) for further cross-examination, has been dismissed.

2. The petitioner has been arraigned as an accused in the case bearing FIR No. 404, dated 17.11.2020, under Sections 376(2)(n), 506, 328 of the Indian Penal Code (for short 'IPC'), registered at Police Station Urban Estate, Rohtak. During the course of trial, the statements of the

prosecutrix and her mother were recorded as PW1 and PW2 respectively. The petitioner was released on bail in terms of the order dated 30.09.2021 and subsequently, he has moved the present application for recall of the witnesses.

3. I have heard learned counsel for the petitioner and perused the record.

4. Learned counsel for the petitioner contends that the prosecutrix was examined as PW1 on 29.09.2021 and her mother was examined as PW2 on 21.07.2022. The petitioner was released on bail on 30.09.2021. On his release from jail, the petitioner was contacted by the prosecutrix through phone call which was recorded by the petitioner. The petitioner also found that there are other audio recordings of the phone calls between the petitioner and her mother, as well as, the prosecutrix and Ravi, the brother of the petitioner. The petitioner was not aware of the audio recordings as he was confined in jail. It has been submitted that in the telephonic conversation with the petitioner, the victim is stated that she has deposed in the Court at the asking of her parents. After his release from jail, he has come to know of the said recordings and accordingly, recall of the witnesses has been sought.

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 power to recall a witness is wide and could be exercised at any stage, but the same cannot be exercised mechanically, without just and adequate reasons. At the end of the trial, exercise of such power is permissible only in exceptional situation. 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.

6. Before proceeding further, it is pertinent to observe that the perusal of the impugned order indicates that during the pendency of the bail application of the petitioner in this Court in terms of order dated 24.08.2021, the trial Court was directed to make endeavour to record the evidence of the prosecutrix positively well before the date fixed in this Court i.e. 30.09.2021. It implies that it was ensured that the statement of the victim is recorded before the release of the petitioner on bail so that he may not be in a position to exercise any influence or make an attempt to win over her. The exercise of recording the statement of prosecutrix during the course of trial before the release of

the petitioner on bail was carried out to keep her away from any threat, pressure or allurements that may arise at the instance of petitioner which may affect the voluntary nature of the statement.

7. The petitioner and the prosecutrix allegedly had telephonic conversation subsequent to his release from jail which indicates that the petitioner has made an attempt to win over and influence her. Moreover, the other communications regarding which the petitioner is having audio recordings are stated to have been made with the brother of the petitioner. It sounds improbable that in the event any favourable audio recordings were with the brother of the petitioner, he would not have shared with him. The impugned order also indicates that the petitioner was being produced in custody and was physically present at the time when the examination of the prosecutrix was recorded on 29.09.2021. The statement of the mother of the prosecutrix has been recorded on 21.07.2022 after a period of about 10 months from the release of the petitioner on bail. The statements of all the prosecution witnesses except the statement of the Investigating Officer are stated to have been recorded. The statements of the prosecutrix and her mother have been recorded. Sufficient and full opportunity has been afforded to the petitioner to cross-examine the witnesses.

The witnesses have been cross-examined at length. There is

lack and sufficient material to indicate that the petitioner was in any manner handicapped in effectively cross-examining the witnesses at the earlier stage. The recall of prosecutrix and her mother cannot be termed to be justified and does not appear to be essential for the just decision of the case.

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

9. Instant petition is dismissed accordingly.

September 19, 2023

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(Vivek Puri)
Judge

Whether reasoned/speaking: Yes
Whether reportable : Yes