

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

106

CRR-2303-2023 (O&M)

Date of order: 07.10.2023

Satvir Singh

.....Petitioner(s)

Vs.

State of Punjab

.....Respondent(s)

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr.Gursimran Singh Bawa, Advocate
for the petitioner.

Nidhi Gupta, J.

Challenge in the present petition is to the order dated 10.08.2023 passed by learned Additional Sessions Judge, Fatehgarh Sahib whereby application filed by the petitioner under Section 311 Cr.P.C. for recalling PW1/victim and PW2/complainant for further cross-examination, has been dismissed.

2. Learned counsel for the petitioner inter alia submits that the genus of the present FIR emanates from a property dispute between the family. It is submitted that during cross examination of the above said witnesses PW1 and PW2, certain questions could inadvertently not be put to them. It is stated that the said questions are very much essential for the proper adjudication of the case. Learned counsel for the petitioner submits that the said questions pertain to the property transaction of the petitioner in favour of PW2/complainant, and the same would show that the entire case has been falsely implanted against the petitioner. It is submitted that these questions were not put forth by the previous defence counsel and

now the petitioner has changed his counsel, and therefore, in the interest of justice, present impugned order be set aside and PW1 and PW2 be recalled for further cross examination.

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

4. I have heard learned counsel for the petitioner.

5. Perusal of record of the case shows that FIR No.122 dated 10.09.2022 was registered against the petitioner under Sections 376(2)(F), 506 and 509 IPC and Section 6 of POCSO Act, 2012 at Police Station Khamano, Fatehgarh Sahib, and subsequently offence under Section 376-AB IPC was added. Said FIR (Annexure P1) was registered on the basis of statement of sister-in-law/bhabhi of the petitioner with the allegations that the petitioner had molested and raped her 11-year-old daughter PW1/victim. It was alleged that the petitioner inserted his fingers in the victim's private part and asked her to put his private part in her mouth.

6. Perusal of the case file further reveals that examination-in-chief and cross-examination of the victim/PW1 was conducted on 25.01.2023; and examination-in-chief and cross examination of PW2/complainant was also recorded on 25.01.2023 whereas application under Section 311 Cr.P.C for recalling of PW1 and PW2 was filed by the petitioner after 6 months on 25.07.2023 (Annexure P2). In any event, it is admitted that thereafter, statements of entire prosecution witnesses as well as defence witnesses have been recorded and the case now stands adjourned for final arguments.

7. Moreover, the only ground taken by the petitioner in the said application is that the accused had engaged new counsel on the

last date of hearing and it has come to his knowledge from the file that few important questions were left to be asked to the said witnesses.

8. It has been recorded by the learned trial Court in the impugned order that PW1/victim and PW2/complainant were cross examined at length by learned counsel for the accused. It is my view, that therefore, the petitioner ought to have put the relevant questions to the witnesses at that time. No reason whatsoever has been given for failure to do so. Learned trial Court has further relied upon judgment of the Hon’ble Supreme Court rendered in **“AG Vs. Shiv Kumar Yadav” Law Finder Doc Id # 707713** to hold that mere change of counsel cannot be a ground to recall the witness(s). Learned counsel for the petitioner is unable to dispute the abovesaid factual and/or legal position. Accordingly, I find no error whatsoever in the reasoning of the learned trial Court.

9. Present petition therefore, stands **dismissed**.

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

07.10.2023
Sunena

(Nidhi Gupta)
Judge

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No