

**IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH**

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**CRR-2526-2023 (O&M)
Date of decision: 14.12.2023**

Sandeep**...Petitioner**

Versus

State of Haryana**...Respondent****CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA**

Present:- Mr. Ankur Lal, Advocate
for the petitioner.

MANISHA BATRA, J. (Oral)

1. The present revision petition petition has been filed challenging the order dated 05.10.2023, passed by the Additional Sessions Judge, Special Court, Kaithal, whereby the application filed by the petitioner under Section 311 Cr.P.C. for recalling the victim, who was already examined as PW-1, for further cross-examination by the counsel of the petitioner, was dismissed.

2. Brief facts of the case relevant for the purpose of disposal of the present case are that the FIR No. 221 dated 05.05.2021 was registered under Sections 363 & 366-A of the IPC at Police Station Kalayat, District Kaithal on the complaint of 'M' (*name withheld*) alleging therein that the victim 'A' (*name withheld*), who was her minor daughter, was studying in 10th Class. On 03.08.2021 at 8.50 AM, 'A' went to school but did not return home. She alleged that as per information received from the present

petitioner-accused, Surender @ Golu had kidnapped her daughter on the pretext of performing marriage with her. Hence, she prayed for taking penal action against the culprits. After registration of the FIR, investigation proceedings were initiated. The victim was recovered from Bus Stand, Ambala on 13.08.2021. Her Statements under Section 161 and 164 of Cr.P.C. were got recorded. The accused Surender @ Golu was arrested. Subsequently, on filing a complaint by the victim about involvement of the present petitioner, he was arrested. Offences under Sections 376-D, 34 of the IPC and Section 6 of the POCSO Act were added. and the petitioner was arrested. Upon completion of necessary investigation and usual formalities, challan was presented in Court and charges were framed against the petitioner for commission of aforementioned offences. During the course of trial, the prosecution had examined the victim as PW-1 on 12.04.2022 and she was cross-examined on the same day.

3. Learned counsel for the petitioner has argued that the petitioner has been falsely implicated in this case. The prosecution, in order to prove its case, has relied upon the Aadhar Card of the victim as proof of her age, as per which, the victim was aged about 18 years and 07 months at the time of alleged incident. Though the prosecution had relied upon the Aadhar Card of the victim but the same was not available on record at the time of examination of the victim. Hence, she was required to be examined with regard to said Aadhar Card, which has now come on record. Learned counsel for the petitioner has argued that the trial Court had wrongly dismissed the application filed by the petitioner under Section 311 Cr.P.C. for recalling the victim for further cross-examination. It is argued that the

Aadhar Card of the victim is a necessary evidence to prove the fact that the victim was not a minor on the date of incident. To substantiate his arguments, learned counsel for the petitioner has relied upon ***Raja Ram Prasad Yadav vs. State of Bihar and another, 2013 (3) RCR (Criminal) 726.***

4. I have heard learned counsel for the petitioner and have also gone through the record.

5. A perusal of the impugned order as well as the statement of the victim recorded by way of cross-examination reveals that the petitioner was given adequate opportunity to cross-examine the victim, when she had appeared as witness before the trial Court. It is not the case of the petitioner that a different date of birth of the victim was recorded in the Aadhar Card but the same was not to his knowledge at that time. Rather a perusal of the statement of the prosecutrix reveals that during her cross-examination, specific questions qua her age and about the fact that she had got prepared her Aadhar Card were asked. It is well settled proposition of law that an application under section 311 Cr.P.C must not be allowed only to fill up a lacuna in the case of the prosecution, or of the defence or to give an unfair advantage to the opposite party. In ***Swapan Kumar Chatterjee vs. Central Bureau of Investigation, 2019 (2) Scale 654***, Hon'ble Supreme Court has held that the power conferred under Section 311 Cr.P.C. should be invoked by the court only to meet the ends of justice and for strong and valid reasons and it should be exercised with great caution and circumspection.

6. The arguments raised by learned counsel for the petitioner have already been dealt with by the trial Court, while dismissing his application

filed under Section 311 Cr.P.C. by passing a detailed order. He has advanced the same arguments as advanced before the trial Court. Keeping in view the aforesaid facts and circumstances, I find no merit in the present revision. Hence, the same is dismissed.

14.12.2023
Waseem Ansari

(MANISHA BATRA)
JUDGE

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No