

**IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH**

Sr. No.131

CRM-M-56790-2023 (O&M)

Date of decision : 09.11.2023

Irshad and another

..... Petitioners

VERSUS

State of Haryana

..... Respondent

CORAM: HON'BLE MS. JUSTICE HARPREET KAUR JEEWAN

Present: Mr. G.S. Bedi, Advocate, for the petitioners.

HARPREET KAUR JEEWAN, J. (Oral)

1. The present petition under Section 482 Cr.P.C. has been filed for quashing of order dated 10.10.2023 (Annexure P-7) whereby application for summoning of defence witnesses has been dismissed during the trial in FIR No.202 dated 07.09.2020 under Sections 363, 366-A, 376-D & 506 IPC and Section 6 of the POCSO Act, 2012.

2. Learned counsel for the petitioners contended that the statement of the accused under Section 313 Cr.P.C. was recorded on 24.08.2023 and immediately thereafter on 20.09.2023, an application was moved for summoning of the defence witnesses who are material witnesses, but the said application was dismissed by the trial Court on the ground having been filed just to linger on the proceedings.

3. Notice of motion.

4. Mr. Amrik Singh Narwal, DAG, Haryana, accepts notice on behalf of the respondent-State and submitted that the case is now fixed for 16.11.2023 for defence arguments.

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5. Mr. Mazlish Khan, Advocate, puts in appearance on behalf of the complainant-prosecutrix and submits that the documents sought to be examined are in no way related to the controversy in question. The prosecution has already examined PW-10, namely, Surender Singh, Guest Teacher at the school where the prosecutrix was studying, to prove her date of birth, as such the application has been rightly dismissed.

6. As per the impugned order (Annexure P-7) the petitioners intended to examine the concerned Clerk from the office of Registrar, Birth & Death to prove the entry of date of birth of 16.02.2002 in respect of the prosecutrix. Apart from this, the concerned Clerk from the Government Primary School, Sikrawa was sought to be examined for proving the admission records of the sibling of the prosecutrix and third witness sought to be examined was the Clerk of the Food and Safety Office to prove the ration card. Since, the trial is under Section 6 of the POCSO Act 2012, as such, the age of the prosecutrix is a material question to be determined during the trial. Hence, the defence of the accused cannot be shut on the ground that the summoning application is filed just to linger on the trial, especially when the application was filed by the defence immediately after the statements under Section 313 Cr.P.C. was recorded.

7. In view of the above reasons, I am of the considered opinion that the petitioners have a right to lead evidence in defence and dismissal of the application to summon the witnesses would cause prejudice to rights of the petitioners. Consequently, the petition is allowed. Impugned order dated 10.10.2023 (Annexure P-7) is set aside and the petitioners would be given

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one effective opportunity to examine the abovesaid witnesses. Since, the petitioners are in custody, the service of the said witnesses be effected by way of issuance of summons.

(HARPREET KAUR JEEWAN)
JUDGE

09.11.2023
Ramandeep Singh

Whether speaking / reasoned	Yes/No
Whether Reportable	Yes/No