

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

132

CRM-M-3896-2024 (O&M)
Date of decision: 25.01.2024

Vikas alias Sonu ...Petitioner

Versus

State of Haryana and another ...Respondents

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present:- Mr. Aditya Sanghi, Advocate
For the petitioner.

MANISHA BATRA, J. (Oral)

1. This petition has been filed by the petitioner under Section 482 Cr.P.C. seeking quashing of order dated 23.11.2023, passed by the trial Court in Sessions Case No. 99/2022, titled as State vs. Vikas @ Sonu and another, arising out of FIR No. 356 dated 26.11.2021, registered under Sections 363, 366-A, 201, 120-B of IPC and Sections 8, 18 of the POCSO Act, 2012 at Police Sation Bawal, District Rewari, whereby an application as filed by the petitioner/accused for recalling the victim, who had already appeared as PW-1, was dismissed.
2. Brief facts of the case relevant for the purpose of disposal of this petition are that the present petitioner along with co-accused had been booked in the abovementioned FIR on the basis of a written complaint filed by complainant 'L' (*name withheld*) alleging therein that his cousin sister 'M' (*name withheld*) was found missing from the house in the morning of 16.01.2021 and could not be traced. Initially, a case under Section 363 of IPC was registered. Subsequently, the complainant had recorded a supplementary

Neutral Citation No. 2024:PHHC:010957

statement on 09.12.2021 alleging that the present petitioner along with co-accused had hand in the kidnapping/abduction of the victim. The petitioner was arrested on 10.12.2021. The victim was recovered from the house of the co-accused on 10.12.2021. Thereafter, offences under Sections 366-A, 201, 120-B of IPC and Sections 8, 18 of the POCSO Act, 2012 were added during the course of investigation. After completion of necessary investigation and usual formalities, challan was presented in the Court. During the course of trial, the victim appeared before the trial Court and was examined as PW-1.

3. It is argued by learned counsel for the petitioner that the impugned order, whereby the trial Court had refused to allow the application filed by the petitioner for recall and re-examination of the victim is liable to be set aside as the counsel, who was engaged by the petitioner previously in the trial Court, failed to put certain relevant questions to the victim, despite the fact that the victim had made improvements in her previous version and had narrated some new facts. He has further submitted that the denial of right to further cross-examine the victim on some material points would cause great prejudice to the petitioner, whereas it will have no effect on the prosecution. With these broad submissions, it is argued that the present petition deserves to be allowed. In support of his arguments, learned counsel for the petitioner has relied upon ***Lakhan Singh vs. Amarjeet Singh (SC)***, Criminal Appeal No. 2191 of 2022, decided by Hon'ble Supreme Court on 06.12.2022 and ***Ashok Tshering Bhutia vs. State of Sikkim (SC) : 2011 AIR SC 1363***.

4. I have heard learned counsel for the petitioner at considerable length and have gone through the record and on a perusal of the same, I am of the considered opinion that the present petition is liable to be dismissed.

5. The prayer made by the petitioner for recalling the victim/prosecutrix for the purpose of her further cross-examination is that she had improved her version as given in the FIR as well as in the statement recorded under Section 164 Cr.P.C. and had made material improvements but as the previous counsel engaged by him could not confront the victim on that point, therefore, he deserves to recall the victim. However, it is important to say here that it has not been mentioned that as to what material improvements had been made by the victim in her sworn deposition and what new facts had been brought on record, which required her re-examination. Rather, a perusal of the copies of statement recorded by the victim reveals that she was cross-examined in detail and rather, her cross-examination was deferred at least thrice. Meaning thereby, due and ample opportunity of cross-examination of the victim had been availed by the petitioner.

6. It is well settled proposition of law that an application under section 311 Cr.P.C must not be allowed only to fill up lacunas 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. The victim, who was already cross-examined at length, which is evident from the record, cannot be recalled for cross-examination only on the ground that the counsel for the petitioner could not confront her on some points. Though, Section 311 Cr.P.C. confers vast discretion upon the Court and is expressed in the widest possible

terms, the discretionary power under the said section can be invoked only for the ends of justice. The provisions of this section should be exercised consistently with the provisions of the Code and the principles of criminal law. The discretionary power conferred under Section 311 Cr.P.C. has to be exercised judicially for reasons stated by the Court and not arbitrarily or capriciously. Reference in this context can be made to *Vijay Kumar vs. State of U. P. : (2011) 8 SCC 136* as well as to the judgments rendered by this Court in *Bhag Singh vs. Madan Lal Walia : 1998 (3) Civil Court Cases 597(1)(P&H)* and *Joginder Singh vs. Devinder Kumar : 1999(1) Civil Court Cases 202(P&H)*. The ratio of law as laid down in the above cited judgments is that a witness cannot be ordered to be recalled on the ground that he was not cross-examined effectively as scope of Section 311 Cr.P.C. does not permit a Court to go into the aspect whether the material portions of evidence on record should have been put to the witness in cross-examination to elicit their correctness.

7. The arguments raised by learned counsel for the petitioner before this Court 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 petition. Hence, the same is dismissed.

25.01.2024

Waseem Ansari

(MANISHA BATRA)
JUDGE

Whether speaking/reasoned

Yes

Whether reportable

Yes

