

2024:PHHC:067191



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

294

CRR-449-2024 (O&M)
Date of decision: 14.05.2024

Harpreet Kaur **...Petitioner**

Versus

State of Haryana and another **...Respondents**

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present:- Mr. Surinder Gandhi, Advocate
for the petitioner.

MANISHA BATRA, J. (Oral)

1. This revision petition has been filed by the petitioner challenging the order dated 14.02.2024, passed by the Court of learned Additional Sessions Judge, Fast Track Court under POCSO Act, Ambala in Sessions Case No. 61/2022, titled as *State vs. Anil Gupta and others*, arising out of FIR No. 0234 dated 06.08.2021, registered under Sections 498-A, 354, 323, 506 of IPC and Section 10 of the POCSO Act, 2012 at Police Station Mahesh Nagar, Ambala, whereby an application as filed by the petitioner/complainant under Section 311 of Cr.P.C. was partly allowed and she was permitted to be recalled for producing one Pen Drive but her prayer for summoning the Record Keeper from the office of Superintendent of Police, Ambala was declined.
2. Brief facts of the case relevant for the purpose of disposal of this petition are that the present petitioner has got registered the aforementioned

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FIR alleging therein that her marriage was solemnized with Ankit Gupta on 03.08.2015. Two children were born out of the wedlock. She alleged that soon after the marriage, she was subjected to harassment and cruelty by the accused persons on account of demand of dowry but she could not fulfill their demands as her parents had died even before her marriage. She also alleged that accused No. 1 Anil Kumar Gupta, who is her father-in-law had forced her on many occasions to make physical relations with him. However, when the complainant refused to do so, she was shunted out from her matrimonial house, though after some days she was allowed to reside in her matrimonial house. It is also alleged that accused No. 1 had even sexually molested her children many times in front of her. She was even extended beatings by the accused persons and they were even planning to kill her. Their conversation in this regard was recorded by the complainant and was attached with her complaint. She had, thus, prayed for taking legal action against the culprits. After completion of necessary investigation and usual formalities, *challan* under Section 173 of Cr.P.C. was present in the Court and presently, the accused persons are facing trial for commission of aforesaid offences. During the course of trial, the petitioner/complainant had filed the aforesaid application under Section 311 of Cr.P.C. for producing one Pen Drive, which according to her, she had given to the police but the same was not made part of *challan* and she also inadvertently could not prove the same before the Court while appearing as a witness. She also sought to summon the Record Keeper from the office of Superintendent of Police, Ambala. The application of the petitioner had been partly allowed by the trial Court by passing the impugned order in the manner as mentioned above.

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3. Learned counsel for the petitioner has argued that although the trial Court had allowed her application qua recalling her for the purpose of producing the said pen drive, however, at the same time, it had erred in declining the prayer of the petitioner qua summoning the Record Keeper of the office of Superintendent of Police, Ambala, which is not sustainable in the eyes of law. It is further submitted that the petitioner had also moved a complaint bearing No. 523 dated 29.10.2021 to IGP, Ambala Range but since the fair investigation was not conducted on the same, it was referred to ASP, Ambala for further investigation, wherein the statement of the petitioner was recorded in the office of ASP, Ambala and while recording the statement, she had handed over another pen drive in support of her statement. On considering the statement of the petitioner as well as the said pen drive, the ASP, Ambala had ordered for the change of Investigating Officer. Neither the said statement nor said pen drive was made part of the *challan* report, though they were very essential for just and proper decision of the case. Hence, the said official from the office of Superintendent of Police, Amala is required to be summoned and the denial of non-summoning of the said official 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 ***Sister Mina Lalita Baruwa vs. State of Orissa and others : 2014(1) RCR (Criminal) 257.***

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.

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5. The petitioner, by filing an application under Section 311 of Cr.P.C. before the trial Court, had made two fold prayers, i.e. she be recalled for the purpose of producing/proving a pen drive, in which, she had recorded the conversation of the accused persons, wherein they were conspiring to kill her and to throw her out of her matrimonial house as the same was not made part of the challan, though it was attached by her with her complaint and secondly she prayed for summoning the Record Keeper from the office of Superintendent of Police, Ambala for proving a complaint bearing No. 523 dated 29.10.2021, which she had submitted to police authorities along with another pen drive. Vide impugned order, the application so filed by the petitioner under Section 311 of Cr.P.C. was partly allowed by allowing her to be recalled for proving the said pen drive but it was dismissed qua summoning of aforesaid official from the office of Superintendent of Police, Ambala. A perusal of the entire record shows that the aforesaid complaint is not attached with this petition. It seems that it was not attached with the application under Section 311 of Cr.P.C. as well. The petitioner has merely stated about the said complaint and enquiry made thereon by the police but she has failed to produce the same. The petitioner has nowhere stated as to what she wanted to prove by summoning the said official and as to in what manner, the complaint No. 523 and its enclosures i.e. a pen drive were essential for proving her case as she had only stated that it contained 'important audio and video recording'. More so, on the same cause of action, the aforementioned FIR had already been registered by the police and the trial is going on. The petitioner has already been allowed to prove the pen drive, which she had given to the police

authorities with her complaint, on the basis of which, the present FIR had been registered.

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. 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. In view of the discussion as made above and also in view of the ratio of law as laid down in aforesaid judgments, I find no infirmity in the impugned order passed by the trial Court. Hence, the present petition is dismissed.

14.05.2024
Waseem Ansari

(MANISHA BATRA)
JUDGE

<i>Whether speaking/reasoned</i>	<i>Yes</i>
<i>Whether reportable</i>	<i>Yes</i>