

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

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CRM-M-12796-2024(O&M)
Date of order: 13.03.2024

Suraj Sharma

.....Petitioner(s)

Vs.

State of Punjab

.....Respondent(s)

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr. Arshdeep Singh Brar, Advocate
for the petitioner.

Mr. Kunwarbir Singh, AAG Punjab.

Nidhi Gupta, J.

Challenge in the present petition is to order dated 26.02.2024 passed by learned Additional Sessions Judge, Moga, whereby application filed by the petitioner/accused under Section 311 Cr.P.C. for recalling the victim for further cross-examination after receipt of the FSL report, has been dismissed in case FIR No.30 dated 19.02.2023 registered under Sections 363, 366-A and 376 IPC and Section 6 of POCSO Act at Police Station Dharamkot, District Moga.

2. Learned counsel for the petitioner inter alia submits that the above said FIR was registered on the basis of statement of mother of the victim. During the trial, the victim was examined by the learned trial Court on 02.08.2023 (Annexure P2). FSL report was received in the learned trial Court on 13.09.2023 and exhibited as P14 on 12.12.2023. As per the FSL report *"no human semen and male DNA was recovered in the samples"*.

It is submitted that as such, the story of the victim with regard to

allegations of rape have fallen flat. Accordingly, the petitioner moved an application under Section 311 Cr.P.C. for recalling the victim for cross-examination in respect of the FSL report. However, the same has been declined vide the impugned order and therefore, grave injustice would be caused to the petitioner if he is not allowed to cross-examine the victim.

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

4. I have heard learned counsel for the petitioner and perused the case file in detail.

5. Perusal of record of the case shows that the victim went missing from her house on 18.02.2023. As such FIR was registered by mother of the victim on 19.02.2023. Thereafter, the victim was recovered from custody of the petitioner on 22.02.2023.

6. Perusal of record further shows that the victim (PW2) was examined on 02.08.2023. Her testimony is on record as Annexure P2. Her cross-examination was also concluded by the defence counsel on the same day. Admittedly, the petitioner had previously also moved an application under Section 311 Cr.P.C. for recalling the victim for cross-examination. The said application had been dismissed by the learned trial Court vide order dated 12.12.2023. This is the second application filed by the petitioner under Section 311 Cr.P.C. seeking re-examination of the victim. It is established proposition in law that the child victim is not to be called repeatedly to testify. Furthermore, medical evidence is corroborative in nature and is not the final substantial evidence. As such, I am in

concurrence with the view taken by the learned Court below, and the reasoning contained in the impugned order.

7. Thus, I find no infirmity in the impugned order dated 26.02.2024 passed by learned Additional Sessions Judge, Moga. Present petition accordingly stands **dismissed**.

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

13.03.2024	(Nidhi Gupta)
Sunena	Judge
Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No