

2024:PHHC:056409

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-14022-2024

Date of decision: 25.04.2024

Vikas

...Petitioner

V/s

State of Punjab and another

...Respondents

CORAM: HON’BLE MR. JUSTICE SUMEET GOEL

Present: Mr. Gaurav Vir Singh Behl, Advocate for the petitioner.
Mr. Adhiraj Singh Thind, AAG Punjab.
Mr. Abhaysher Singh, Advocate for respondent No.2.

SUMEET GOEL, J.

1. The instant petition has been filed under Section 482 of the Code of Criminal Procedure, 1973 seeking quashing of order dated 23.10.2023 (Annexure P-11) passed by Additional Sessions Judge, Sangrur whereby application filed by the petitioner-accused under Section 311 of Cr.P.C. of 1973, for re-calling of PW-1 (victim), was dismissed.
2. Learned counsel for the petitioner has argued that the re-examination of the victim was very much necessary for proper and fair adjudication of the case. He submits that some important facts/questions, which have material bearing on the decision of the case, were not earlier put to the victim (PW-1) during her cross-examination. It has been further argued that the Court below has dismissed the application on the ground that the victim had already been examined at length and moreover no specific question or aspect has been mentioned in the application which necessitated re-examination of the said victim (PW-1). According to the learned counsel, the impugned order is based on surmises and conjectures and the learned

trial Court ought to have allowed the said application. Thus, the impugned order is liable to be set-aside.

3. Learned State counsel as well as counsel appearing for the respondent No.2 have opposed the instant petition by arguing that sufficient opportunity(s) were provided to the petitioner-accused for conducting cross-examination of the said witness (PW-1) & all the material facts/questions have already been put to the victim during her cross-examination. It has been further argued that no plausible explanation has been furnished in the said application for re-calling the said witness for cross-examination. Therefore, dismissal of the instant petition is prayed for.

4. I have heard learned counsel for the rival parties and perused the paper-book.

5. It would be apposite to refer herein to a judgment passed by this Court in case titled as ***Karamjit Singh vs. State of Punjab and another: 2024 NCPHHC 24178***; relevant whereof reads as under:-

“8.4 As an epilogue to the above rumination, the following principles emerge:

(I) The broad gamut for exercising power by a criminal trial Court under Section 311 of Cr.P.C. are as follows:

(i) The prime factor for considering a plea under Section 311 of Cr.,P.C. is as to whether such evidence “appears to be essential to the just decision of the case.”

(ii) Section 311 of Cr.P.C. can be invoked by a criminal trial Court even when cross-examination of a witness has earlier been foreclosed by a Court order. Such exercise of power by the Court cannot be construed as the concerned Court recalling/reviewing its own order.

(iii) Section 311 of Cr.P.C. empowers a criminal trial Court to even allow further examination/cross-examination of a witness at instance of the prosecution/accused.

(iv) A criminal Court is well within, its judicial discretion, to summon any person as a witness at any stage of proceedings/trial etc. till such Court is seized of the matter.

(v) A criminal trial Court may exercise power under Section 311 of Cr.P.C. on an application made by a party to lis or on its own volition.

- (vi) *Successive application(s) for summoning same witness for examination/re-examination is not debarred but such a plea deserves to be dealt with exercising a higher degree of circumspection.*
- (II) *No straight jacket formulae can be enumerated regarding mode, manner and extent of exercise of power under Section 311 of Cr.P.C by a criminal trial Court as every case has its own unique facts/circumstances. It is neither possible nor pragmatic to lay down any such exhaustive guidelines as every case is sui generis in terms of factual conspectus.*
- (III) *Needless to say that exercise of power under Section 311 of Cr.P.C. by a criminal trial Court should be undertaken by according cogent and lucid reasons, in accordance with basic principles of our criminal jurisprudence, for such exercise of its power.”*

6. The impugned order arises from a trial being undertaken against the petitioner (herein) in FIR No.57 dated 18.07.2022 for offences under Sections 363, 366 of IPC and Section 376 of IPC and Section 4 of POCSO Act (added later on) at Police Station Cheema, District Sangrur. The petitioner was arrested on 20.07.2022 on a complaint made by the mother of the victim. After completion of investigation, report under Section 173 Cr.P.C. was presented before the competent court of jurisdiction. A perusal of the paper-book reveals that during trial, the witness in question i.e. PW-1 (victim) was examined and cross-examined on 22.05.2023. Thereafter, trial proceeded and certain other witnesses were also examined. Thereafter, on 23.08.2023, the instant application under Section 311 Cr.P.C. was filed on behalf of the accused-petitioner wherein a prayer was made for re-calling of PW-1 (victim) on the ground that some important facts/questions were not put in the cross-examination of the victim which were very much necessary for effective and proper adjudication of the case in hand. The said application was opposed by the State and reply thereto was also filed. It is in this factual backdrop, the impugned order dated 23.10.2023 was passed by the learned trial Court.

7. The factual conspectus of the matter in hand reflects that though the victim (PW-1) was examined and an opportunity for cross-examination was also afforded to the accused-petitioner. However, it appears that the victim was examined prior to the examination of medical officer who deposed as PW-3 and the question with regard to FSL report (DNA) could not be put to the victim which in fact seems necessary for a just decision of the case. It is trite law that the cross-examination of a prosecution witness serves as edifice to the defence of an accused. By way of the application in question, the recalling of such witness for the purpose of cross-examination was sought for. This aspect assumes more importance in the present case as the witness, who is sought to be recalled for cross-examination, is a prime prosecution witness, being the victim. By way of the impugned order, the learned trial Court has dismissed the application in question by holding that the victim had already been cross-examined at length and otherwise also. Furthermore, no specific question or aspect was mentioned in the application which necessitates further cross-examination of the said witness. The valuable right of accused to establish his defence by leading evidence ought not to be taken away by the Court except in a case of their deliberate omission/failure to adduce the same earlier. In the instant case, prejudice would indeed be caused to petitioner herein, unless afforded an effective opportunity to re-examine PW-1 (victim)

8. For the foregoing reasons, in order to meet the ends of justice and to arrive at a just decision of the case, this Court deems it appropriate to grant one effective opportunity to petitioner to re-examine the proposed witness i.e. PW-1 (victim). Accordingly, the present petition is allowed and the impugned order dated 23.10.2023 passed by Additional Sessions Judge, Sangrur is quashed & the trial Court is directed to afford one clear effective

opportunity to petitioner for re-examination of PW-1 (victim). This shall, however, be subject to payment of Rs.10,000/- as costs to be paid to the District Legal Services Authority, Sangrur, Punjab. The payment of costs, shall be a condition precedent, for allowing cross-examination of PW-1 (victim) as directed hereinabove.

9. Pending application(s), if any, shall also stand disposed off.

(SUMEET GOEL)
JUDGE

April 25, 2024
Ajay

Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No