

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRR-932-2024
Reserved on: 09.05.2024
Pronounced on: 13.05.2024

Subhash
... Petitioner

Vs.

State of Haryana and another
... Respondents

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Hamid Hussan, Advocate
for the petitioner.

Ms. Geeta Sharma, DAG Haryana

HARPREET SINGH BRAR, J.

1. The present revision petition has been preferred against the impugned order dated 12.04.2024 passed by the learned Additional Sessions Judge, Sonipat, whereby the father of the prosecutrix was declined to be summoned as a defence witness in FIR No. 214 dated 19.07.2023 registered under Sections 354-A, 376(3), 506 IPC and Sections 4 and 6 of the Protection of Children against Sexual Offences Act, 2012 (hereinafter ‘the POCSO Act’) at Police Station Rai.
2. Briefly, the facts of the case are that on 02.07.2023, the prosecutrix, a 13 years old girl, was left under the care of the petitioner- her uncle (*taya*) when her parents were visiting village Sevapur. On their return, the prosecutrix informed her mother-the complainant that the petitioner had on 02.07.2023, when she was sleeping, the petitioner did some wrong act with her

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and threatened her not to tell anyone about the incident. The prosecutrix also told the complainant that the petitioner attempted to commit the same thing again on 03.07.2023.

3. Learned counsel for the petitioner inter alia contends that the defence was not given an effective opportunity to cross-examine the father of the prosecutrix in spite of being on the list of prosecution witnesses. Since a legal aid counsel, who was previously handling the matter, did not conduct proper cross-examination, an application under Section 311 Cr.P.C. was moved to recall the victim and the complainant for further cross-examination by the new counsel. However, the same was dismissed by the learned trial Court vide order dated 05.04.2024 and the revision petition qua the same was dismissed by this Court vide order dated 22.04.2024. He further contends that examination of the father of the victim is of the utmost importance to prove the case for the defence and therefore, he was sought to be summoned as a defence witness under Section 233 Cr.P.C. However, the learned trial Court has fallen into grave error by dismissing the application filed by the petitioner under Section 233 Cr.P.C. to that effect, vide order impugned order dated 12.04.2024.

4. Having heard learned counsel for the parties and after perusing the record with their able assistance, it is evident that the father of the prosecutrix was listed as a prosecution witness but given up by the Public Prosecutor. The prosecution retains the right to decide which witnesses are to be examined to best make out their case, as such, merely being on the list of witnesses does not necessitate examination.

5. Section 233 Cr.P.C. reads as follows:



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Section 233– Entering upon defence

(1) Where the accused is not acquitted under section 232, he shall be called upon to enter on his defence and adduce any evidence he may have in support thereof.

(2) If the accused puts in any written statement, the Judge shall file it with the record.

(3) If the accused applies for the issue of any process for compelling the attendance of any witness or the production of any document or thing, the Judge shall issue such process unless he considers, for reasons to be recorded, that such application should be refused on the ground that it is made for the purpose of vexation or delay or for defeating the ends of justice.

A perusal of the abovementioned provision would indicate that an application under Section 233 Cr.P.C. can only be rejected if it has been filed with an intention to delay the trial, to vex the other party or if allowing such an application would defeat the ends of justice. However, the case at hand does not fall into any of the aforementioned caveats. As such, this Court is of the considered opinion that in order to determine the truth and do meaningful justice, the petitioner must be allowed to examine the father of the prosecutrix, even as a defence witness.

6. Every trial is a voyage of discovery in which truth is the quest. However, the trial must be conducted under the settled practices and the procedure laid down by the legislature in its wisdom. As such, the Courts must proceed with an intention to seek the truth and make genuine efforts within judicial sphere to ensure that the foundational right of the accused to a fair trial is not trampled and all stakeholders are insulated from any prejudice caused by deviating from the prescribed procedure. Judicial and procedural justices are essential components of administration of justice. The bypassing of procedural



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justice often prejudices the trial and impedes the constitutional right of the parties to free and fair trial.

7. While it is true that procedure is the handmaid of justice, however, pragmatic judicial practice requires that only when it is expedient in the interest of justice and does not cause prejudice to the prosecution or the defence, that deviation from the procedure may be made. Otherwise, any such deviation from the procedural safeguards would be impermissible and would defeat the ends of justice. The Hon’ble Supreme Court in *Avtar Singh and another Vs. State of Punjab AIR 2023 SC 1588* has categorically held the following:

“It is a settled law that where a power is given to do a certain thing in a certain way, the thing must be done in that way or not at all. Other methods are necessarily forbidden. Reference can be made to Dharani Sugars and Chemicals Ltd. Vs. Union of India and others reported in (2019) 5 SCC 480.”

8. In view of the above discussion, the present petition is allowed and the impugned order dated 12.04.2024 passed by the learned Additional Sessions Judge, Sonipat is set aside. The matter is remanded back to the learned Court below to consider the same in light of the observations made hereinabove.

9. Pending miscellaneous applications, if any, stand disposed of accordingly.

[HARPREET SINGH BRAR]
JUDGE

Reserved on :09.05.2024
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Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No