



CRM-M-24190-2024

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**123 IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH****CRM-M-24190-2024****Date of decision: 29th July, 2024**

Anil Thakur

...Petitioner(s)

Versus

State of Haryana

...Respondent(s)

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present: Mr. Kunal Dawar, Advocate for the petitioner.

Mr. Arjun Lakhanpal, Addl. A.G., Haryana.

MANISHA BATRA, J (ORAL):-

The instant petition has been filed by the petitioner seeking quashing of order dated 12.04.2024 passed by the Court of learned Additional Sessions Judge, Gurugram in Sessions Case No. SC/648-2022 titled as 'State Vs. Anil Thakur' arising out of FIR No. 152 dated 03.05.2022 registered under Sections 201, 324, 328, 34, 376, 506, 376D and 307 of IPC at Police Station DLF Phase-III, Gurugram, whereby an application filed by him under Section 311 of Cr.P.C. had been dismissed.

2. Brief facts of the case relevant for the purpose of disposal of this petition are that the petitioner is facing trial in the aforementioned case on the allegations that he along with the co-accused had subjected the prosecutrix to gang rape and had also criminally intimidated her whereas, the co-accused stabbed in her abdominal thereby causing serious injury to



her. During the course of trial, the prosecutrix had been examined as PW-6. The petitioner thereafter filed application under Section 311 of Cr.P.C. for recalling her, for the purpose of conducting her further examination on the ground that some vital questions were left to be asked by the previous counsel engaged by the petitioner while cross-examining her and those questions were essential for just decision of the case and also that it was on account of negligence on the part of the previous counsel that such questions could not be asked. The learned trial Court after considering the reply filed by the prosecution passed the impugned order thereby declining the prayer made by the petitioner and dismissing his application. Feeling aggrieved, the instant petition has been filed.

3. It is argued by learned counsel for the petitioner that the impugned order is not sustainable in the eyes of law as while passing the same, the learned trial Court did not apply its judicious mind and also failed to consider that the petitioner was going to be deprived of his valuable right to put his defence in a proper manner by further cross-examining the prosecutrix. It is argued that the principles of natural justice were violated. Further cross-examination of the prosecutrix was required to secure the ends of justice as well as for just decision of the petition. Grave error was committed by learned trial Court by dismissing the application by observing that merely because a new defence counsel has been engaged who was having a different line of thinking could not be a reason to recall the witness (prosecutrix). It is, therefore, argued that the petition deserves to be allowed and he deserves to be granted another opportunity to further cross-examine



the prosecutrix to bring out the truth.

4. I have heard learned counsel for the petitioner at considerable length and have gone through the record.

5. As per Section 311 of Cr.P.C., the Court is competent at any stage of any inquiry, trial or other proceeding under this Court to summon any person as a witness or examine any person in attendance, though not summoned as a witness or to recall or re-examine any person already examined, if his evidence appears to be essential to the just decision of the case. This Section is in two parts. The first part gives discretion to the Court to summon or examine any witness at any stage of the proceedings whereas, as per the second part, the Court has to consider the recalling or re-examination of such witnesses, if his/her evidence appears to be essential for just decision of the case. In '**Swapan Kumar Chattarji Vs. Central Bureau of Investigation 2019 (14) SCC 328**', the Hon'ble Supreme Court had observed that the first part of Section 311 of Cr.P.C. which is permissive, gives a purely discretionary authority to the criminal Court and enables it at any stage of inquiry, trial or other proceeding under code to act in one of the three ways i.e. to summon any person as a witness; or to examine any person in attendance, though not summoned as a witness or to recall or re-examine any person already examined. The second part is mandatory which imposes an obligation on the Court to recall, re-examine, summon or examine any such person, if his evidence appears to be essential to the just decision of the case.

6. Reference can also be made to '**Vijay Kumar Vs. State of Uttar**



Pradesh and another, 2011 (8) SCC 136' wherein, it was observed by Hon'ble Supreme Court that though Section 311 of Cr.P.C. confers a vast discretion upon the Court, however, such discretionary power is to be invoked only for the ends of justice and it should be exercised consistently with the provisions of the code and the principles of criminal law. Such power has to be exercised judiciously for reasons stated by the Court and not arbitrarily or capriciously. In view of the law laid down in the above cited pronouncements, it is clear that though the Courts have wide discretion under Section 311 of Cr.P.C. to recall or re-examine any witness at any stage of inquiry, trial or other proceedings but that power has to be exercised with great circumspection and not in a cavalier manner and not arbitrarily or capriciously. Now coming to the peculiar facts of the present case. In this case, the prosecution had been examined in detail by the counsel engaged by the petitioner on 04.03.2023. The application under Section 311 of Cr.P.C. was moved on 13.02.2024 i.e. after about one year from the date of examination of this witness. As discussed above, the prayer for recalling the prosecutrix for conducting her examination had been made on the ground that the previous counsel did not cross-examine her on certain vital points. The question that arises for consideration is as to whether the prayer made by the petitioner can be allowed due to that reason. In my considered opinion, the answer should be in the negative.

7. In *Zahira Habibulla H. Sheikh and anr. v. State of Gujarat and ors 2004 (2) RCR (Crl.) 836*, the Supreme Court described the scope of

Section 311 of the Code as under:-



“Object of the Section is to enable the court to arrive at the truth irrespective of the fact that the prosecution or the defence has failed to produce some evidence which is necessary for a just and proper disposal of the case. The power is exercised and the evidence is examined neither to help the prosecution nor the defence, if the court feels that there is necessity to act in terms of Section 311 but only to subserve the cause of justice and public interest. It is done with an object of getting the evidence in aid of a just decision and to uphold the truth.”

8. A perusal of the statements of the prosecutrix reveals that when she was put to examination, there was a detailed cross-examination. Some questions might have not been asked by the previous counsel engaged by the petitioner to prosecutrix but due to that reason, it cannot be stated that the petitioner was not granted a fair opportunity to defend his case. It is well settled principle of law that victims in cases of sexual assault cannot be subjected to the ordeal of repeated cross-examinations where sufficient opportunity has already been granted to the accused at appropriate stage to cross examine the witnesses. Reliance in this regard can be placed upon observations made by High Court of Madras in ***CRL. O.P. No.211 of 2021 & Crl. M.P. No.93 of 2021*** tilted as ***‘Krishnaraj @ Thangaraj v. Inspector of Police’*** decided on ***08.01.2021***, wherein it was observed that the recall of witness on the ground that there is a new counsel who has been engaged by the petitioner and he found that certain vital questions have not been put to the witnesses, is not a good ground. Even in ***Jamaluddin Mohd. Shaban Ansari v. State of Maharashtra, 2018 SCC OnLine Bom 10155***, which has



been cited by learned counsel for the petitioner himself, a Bench of High Court of Bombay had declined to recall child witness of the same age in a case wherein the accused was facing charge under Section 302 of IPC. Then so far as PW-2 i.e. complainant is concerned, it is revealed that she too was examined in chief on 24.03.2022 and after seeking opportunity to engage a counsel to cross-examine her, her cross-examination was conducted on 31.03.2022 in detailed manner. The lacuna in the case of the petitioner cannot be allowed to be filled up in the garb of the application as filed by the petitioner. In this regard, I rely upon *Mohanlal Shamji Soni v. Union of India and another, AIR 1991 SC 1346*, wherein the Hon'ble Supreme Court while cautioning against filling up lacuna, had observed that the criminal Court has ample power to summon any person as a witness or recall and re-examine any such person even if the evidence on both sides is closed but the jurisdiction of the Court must obviously be dictated by exigency of the situation, and fair play and good conscience appear to be the only safeguards and that only requirement of justice command this examination of any person would depend upon the facts and circumstances of each case. 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's (supra)*, the 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 discretion as



conferred under Section 311 of Cr.P.C. upon the Court is to be invoked only for securing the ends of justice and it should be exercised in consonance with the provisions of the Code and principles of criminal law i.e. judiciously for the reasons stated by the Court and not arbitrarily and capriciously.

9. On applying the aforementioned well established position of law to the peculiar facts and circumstances of the present case, I am of the considered opinion that the petition does not deserve to be allowed and no case has been made out for exercising powers under Section 311 of Cr.P.C. It is accordingly held that the learned trial Court had rightly observed that merely because a new counsel had been engaged, no right *ipso facto* is deemed to be created in favour of the petitioner to recall PW-1 and PW-2 for further cross-examination as prayed for, as that would result in travesty of justice. Keeping in view the discussions as made above, I am of the considered opinion that the impugned order does not warrant any interference. Accordingly, the same is upheld.

10. The petition stands dismissed.

11. Since the main petition has been dismissed, pending application, if any, is rendered infructuous.

[MANISHA BATRA]
JUDGE

29th July, 2024

Parveen Sharma

1. Whether speaking/ reasoned	:	Yes / No
2. Whether reportable	:	Yes / No