

Neutral Citation No. 2024:PHHC:046143

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

284

CRM-M-35875-2023 (O&M)
Date of decision: 05.04.2024

Narinder Kumar @ Narotam ...Petitioner

Versus

State of Punjab ...Respondent

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present:- Mr. Sant Pal Singh Sidhu, Advocate
for the petitioner.

Mr. Satjot Singh, AAG, Punjab.

MANISHA BATRA, J. (Oral)

1. Prayer in this petition, filed under Section 482 Cr.P.C., is for quashing of order dated 01.06.2023, passed by the Court of learned Additional Sessions Judge, Sangrur in Sessions Case No. 231 of 2023, titled as *State vs. Kamaljit Kaur*, arising out of FIR No. 142 dated 11.07.2019, registered under Section 370-A of IPC, Sections 3, 4 of the Immoral Traffic (Prevention) Act, 1956 and Section 17 of the POCSO Act, 2012 (Sections 370, 376-D of IPC, Sections 4, 6 of the POCSO Act and Sections 3(1), 4 and 5 of the Immoral Traffic (Prevention) Act were added later on), whereby the application filed by the petitioner under Section 311 Cr.P.C., for recalling PW-2/prosecturix for her further cross-examination, had been dismissed.
2. Brief facts of the case relevant for the purpose of disposal of the present petition are that the aforementioned FIR had been registered on the basis of the statement recorded by the prosecutrix 'R' (*name withheld*) alleging

Neutral Citation No. 2024:PHHC:046143

therein that her mother had been lodged in jail in connection with some theft case, due to which, her entire family was disturbed and in that state of mind, she had met accused Nisha, who had assured to help her in getting her mother released from jail and on that pretext, she had taken the prosecutrix with herself and then had thrown her into prostitution by facilitating the commission of offence of aggravated penetrative sexual assault upon the prosecutrix by different persons. After keeping the prosecutrix with her for about two months, she had handed over her custody to co-accused Kamaljit Kaur, Sona and Renu, who too had thrown the victim into prostitution and used to get money by sexually exploiting her through several persons. She alleged that somehow she managed to escape from the custody of the above named accused and had reached her home, wherein she had disclosed about the entire occurrence to her father. After registration of FIR, investigation proceedings were initiated. The accused Nisha, Renu and Kamaljit Kaur were arrested. The name of the petitioner surfaced in the disclosure statement of the co-accused and he too was arrested for committing rape upon the victim. After completion of necessary investigation and usual formalities, *challan* under Section 173 Cr.P.C. was presented against the present petitioner and co-accused Kamaljit Kaur. The prosecutrix had been examined as PW-2 in the present case in the year 2019. It is submitted in the petition that some of the co-accused were subsequently arrested and a supplementary challan was presented against Reena Kaur @ Reenu, Sumaranjit Kaur @ Sona, Mahrool Nisa @ Nisha and when the prosecutrix appeared for recording her statement in the Court in the case of the co-accused as PW-3 on 04.01.2023, she did not support the prosecution version and had been declared hostile. It is further submitted that the petitioner had moved an application (Annexure P-6) for recalling the prosecutrix for the

Neutral Citation No. 2024:PHHC:046143

purpose of her further cross examination so that the statement as recorded by her in the case of co-accused could be confronted with her but by passing the impugned order, the trial Court had dismissed his prayer made to that effect. Feeling aggrieved, the petitioner has filed the present petition.

3. It is argued by learned counsel for the petitioner that the impugned order is liable to be set aside as the same is not sustainable in the eyes of law. The petitioner had not been named in the FIR and had been falsely implicated in this case. Even while he was in custody, the victim had sent a letter to him in jail intimating that she was willing to record her statement in his favour. Now in her statement as recorded in the trial of aforesaid co-accused in the same case, she had totally resiled from the prosecution case. The statement so recorded by her in the connected supplementary challan, as submitted against the co-accused, was required to be confronted by the petitioner with the victim so that the truth could come out and, therefore, it is argued that the impugned order deserves to be set aside, the petition deserves to be allowed and the application moved by him under Section 311 Cr.P.C. for recalling the victim deserves to be allowed.

4. Learned State counsel has argued that there were serious allegations against the petitioner. The victim had been examined as PW-2 in the year 2019 in the present case and there was no requirement to recall her for any further cross examination. While submitting that the petitioner is trying to fill up the lacuna in his case, learned State counsel has submitted that there is no infirmity or illegality in the impugned order and, hence, the present petition is liable to be dismissed.

5. I have heard learned counsel for the parties and have also gone through the material placed on record carefully.

Neutral Citation No. 2024:PHHC:046143

5. A perusal of the record reveals that the FIR pertains to the year 2019, in which, the petitioner is facing trial as an accused. He was not named in the FIR as his name surfaced in the case on the basis of the disclosure statement of a co-accused. The prosecutrix/complainant stood examined as PW-2 in the present trial on 26.11.2019. However, since a supplementary challan was presented against some of the co-accused, as mentioned above, the trial qua supplementary challan is also going on, wherein the prosecutrix had appeared as PW-3 on 04.01.2023 and had totally resiled from her allegations as levelled by her against those co-accused and had been declared hostile. By way of filing an application under Section 311 Cr.P.C., the petitioner wanted to recall the prosecutrix for confronting her with her statement recorded in the separate trial of aforesaid co-accused but the same had been dismissed by the trial Court. Now the question that arises before this Court for consideration is as to whether in the given facts and circumstances, the prosecutrix should be recalled for her further cross-examination ? In the considered opinion of this Court, the answer to this question is in the affirmative.

6. Although the examination of the prosecutrix had since been completed way back in the year 2019, when she appeared as PW-2 before the trial Court and had supported the prosecution version, however, this fact cannot be ignored that while appearing as PW-3 in the trial of the aforesaid co-accused, she has resiled from her statement and has totally exonerated the co-accused. A bare perusal of the contents of FIR would reveal that it was co-accused Nisha, who had pushed her into the mud of prostitution and facilitated the commission of offence of rape by several persons and thereafter handed her over to co-accused Kamaljit Kaur, Sona and Renu, who had also sexually exploited the prosecutrix but the prosecutrix had totally exonerated co-accused

Neutral Citation No. 2024:PHHC:046143

Nisha as well as Sumranjit Kaur @ Sona and Reena Kaur @ Reenu of the allegations levelled against them. The allegations against the petitioner are that he was one of the ravishers of the victim. In view of the above circumstances, this Court is of the opinion that in order to defend himself, it is very important for the petitioner to confront the victim with her statement recorded in the trial of aforesaid co-accused.

7. It is well settled that the power, under Section 311 of the Code, can be exercised by the court ***at any stage of any inquiry, trial or other proceedings under the Code***, to summon any person as witness, examine any person in attendance, though not summoned as a witness or recall or re-examine any person already examined. The intention of the Legislature is to empower and enable the court to come to a correct finding and for that reason, the court would be fully justified in permitting production of evidence, whether documentary or oral, where the court feels that the same is necessary for the just decision of the case. No fetters can be put in exercise of these powers of the court. The cause of justice is paramount and no impediment has, therefore, been intentionally put on the court by the Legislature to exercise the powers under Section 311 Cr.P.C.

8. 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

Neutral Citation No. 2024:PHHC:046143

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.”

9. In ***Mannan Sk. and others Versus State of West Bengal and another 2014 (13) SCC 59***, Hon'ble Apex Court had allowed the application filed under Section 311 Cr.P.C. and the witness was recalled and re-examined after 22 years of incident, holding that justice must not be allowed to suffer because of the oversight of the prosecution.
10. In view of the above discussion and also in view of the ratio of law laid down by Hon'ble Supreme Court in aforesaid judgments, this Court is of the considered opinion that further cross-examination of the victim is essential for the just and proper disposal of the case and the petitioner/accused must be given an opportunity to cross-examine the victim in order to defend himself properly.
11. Accordingly, the present petition is allowed and the impugned order dated 01.06.2023 is hereby set aside. The trial Court is directed to accord two effective opportunities to the petitioner to further cross-examine the prosecutrix/complainant. The effective opportunity would mean when the prosecutrix is present in Court for her further cross-examination. The trial Court shall fix a date for the said purpose within a month from the date of receiving a copy of this order.

05.04.2024
Waseem Ansari

(MANISHA BATRA)
JUDGE

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No