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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRR-1521-2024 (O&M)
Date of decision: 14.08.2024

Rita Rani

...Petitioner

Versus

State of Punjab and another

...Respondents

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Amarbir Singh Pahwa, Advocate
for the petitioner.

HARPREET SINGH BRAR, J. (ORAL)

1. The present revision petition has been preferred against the impugned order dated 24.07.2024 passed by learned Additional Sessions Judge, Ludhiana, vide which application under Section 311 of the Code of Criminal Procedure, 1973 (for short 'Cr.P.C.'), seeking recalling of the prosecutrix PW-1 for further cross-examination, in the trial stemming from FIR No.122 dated 12.12.2022 under Sections 376 & 120-B of the Indian Penal Code, 1860 (for short 'IPC'), Section 6 of the Protection of Children from Sexual Offences Act (Amended), 2012, 2019 (for short 'POCSO Act') and



Sections 3 & 4 of Immoral Traffic Prevention Act, 1956 (for short 'ITP Act'), registered at Police Station Daba, District Police Commissionerate Ludhiana, has been dismissed.

2. Briefly, facts of the case are that FIR (*supra*) was registered at the instance of respondent No.2-complainant with the allegations that her mother died 13/14 years ago and she was living with her aunt in Ludhiana and earlier to that, they were living in Moga. For the last 04 months, they were living in the house of the petitioner on rent and about 15 days ago, they shifted to other house. Being acquainted with the petitioner, they often visited each other. On 11.12.2022 at 02.00, the petitioner call the complainant to her home, where an unknown person was present. The petitioner put her in a room by giving some intoxicant substance, due to which she fell unconscious and she was forcibly raped by that man. The petitioner took Rs.500/- from that person and by keeping Rs.300/- with her, gave her Rs.200/-. Again at 04.00 p.m., 05.00 p.m., 05.30 p.m., she was raped one by one by three other persons. After she gained consciousness, she cried and after giving money to her, the petitioner told me not to disclose about the incident to anyone. When the complainant was going towards her aunt's home, she met her aunt and uncle, who were looking for her and she told about the incident to them. Thereafter, her uncle make a call to the control room Ludhiana and her aunt took her to the hospital at night as her health was very bad.



3. Learned counsel for the petitioner, *inter alia*, contends that learned trial Court fell into grave error by not considering case of the petitioner in the right earnest. The petitioner has not been provided proper opportunity to effectively cross-examine the complainant-prosecutrix. It is further contended that the prosecutrix was examined by earlier counsel, who failed to perform his duties and he did not put any question to the prosecutrix regarding her age and her habit of taking intoxicants. Now the petitioner has engaged a new counsel. As such application under Section 311 Cr.P.C. has been filed and denial of the proper opportunity would amount to denial of free and fair trial to the petitioner.

4. Learned counsel for the petitioner further contends that no prejudice would be caused to respondent No.2 in case the present petition is allowed, as he would have the opportunity to effectively cross-examine the complainant-prosecutrix. Learned counsel for the petitioner relies upon the judgment of this Court passed in ***Surjit Singh Vs. State of Punjab and others, CRM-M-42890-2022***, decided on 26.05.2023 and ***Khushwinder Singh and another Vs. State of Punjab, 2007 (1) R.C.R. (Criminal) 531***.

5. Having heard learned counsel for the petitioner and after perusing the record of the case with his able assistance, it transpires that PW-1 prosecutrix-complainant was duly cross-examined at length on 08.01.2024. The petitioner filed the application under Section 311 Cr.P.C. just to fill up the



lacuna and to delay the trial. Furthermore, the statement of the prosecutrix-complainant under Section 164 Cr.P.C. is part of the record. As such, this Court finds no reason to subject PW-1/prosecutrix-complainant to further cross-examination.

6. It is a settled position of law that the power under Section 311 of Cr.P.C. cannot be invoked in a routine manner but the same has to be exercised in exceptional cases, where the Court feels that the re-examination of a witness is essential for the just decision of the case. Moreover, the reliance placed upon by the petitioner on the judgments rendered by this Court in ***Surjit Singh***'s case (*supra*) and ***Khushwinder Singh***'s case (*supra*) do not further the cause of the petitioner. The arguments raised by learned counsel for the petitioner do not satisfy the test of being essential for the just decision of the case and he has not been able to make out a case that allowing re-examination of PW-1/prosecutrix-complainant will not amount to filling up of a lacuna and it will not cause any prejudice to the case of prosecution.

7. In the present circumstance, it is imperative to examine Section 311 Cr.P.C. The text of the said Section is provided below for reference:-

'311. Power to summon material witness, or examine person present. Any Court may, at any stage of any inquiry, trial or other proceeding under this Code, summon any person as a witness, or examine any person in attendance, though not summoned as a witness, or. recall and re-examine any person already examined; and the Court shall summon and examine or recall and re-



examine any such person if his evidence appears to it to be essential to the just decision of the case.'

8. A two Judge Bench of the Hon'ble Supreme Court in ***V. N. Patil Vs. K. Niranjana, 2021 (2) R.C.R. (Criminal) 310***, examined the scope of the power under Section 311 of Cr.P.C and speaking through Justice Ajay Rastogi, the following was observed:

“Object underlying Section 311 Cr.P.C is that there may not be failure of justice on account of mistake of either party in bringing valuable evidence on record or leaving ambiguity in the statements of the witnesses examined from either side. The determinative factor is whether it is essential to the just decision of the case. The significant expression that occurs is ‘at any stage of enquiry or trial or other proceeding under this Code’. It is however, to be borne in mind that the discretionary power conferred under Section 311 CrPC has to be exercised judiciously, as it is always said wider the power, greater is the necessity of caution while exercise of judicious discretion.”

9. The Hon'ble Supreme Court in ***Mohanlal Shamji Soni Vs. Union of India and another, AIR 1991 SC 1346*** has held that where the object of the accused in recalling witnesses already examined in the case is to prolong the trial of the case, the Court would not allow such application. Moreover, the power under Section 311 of Cr.P.C is dictated by exigency of the situation based on the principle of fair play and goodwill and existence of the evidence being essential for the just adjudication of the case is the only guiding factor and that only the ends of justice requires the examination of any person which would depend to the facts and circumstances of each case. It was

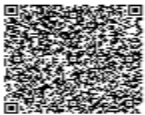


further held that it is obligatory on the part of the court to summon the witness in case his evidence appears to be essential for just decision of the case. Such power may be exercised at any stage. However, the power is circumscribed by the principle underlying the section, that is, the evidence to be obtained must be essential for just decision of the case.

10. A Division Bench of this Court in ***Sukhdev Singh Vs. State of Punjab, 1982 Cr. LJ 2201*** has held as under:

“The discretion is required to be exercised by the Court keeping in view the just decision of the case unmindful of the fact whether any party before it gains or losses from the exercise of such discretion under this section. There is no doubt that object of the section is not to enable any one or the other party to fill up the gaps of its case. The section is not to be used to enable it to repair the lacuna. The sole criterion in such a case should be whether the exercise of power under section is necessary in the interest of justice. While exercising this discretion the court has to keep in its mind the well-known principle of law that the order should not operate as a rebuttal of the case set up by the defence after the prosecution case is closed. The use of this section cannot be limited only to something arising eximporviso which no human agency could see. The mere fact that evidence is permitted to be taken after the entire prosecution case is over is in itself in excess of the powers of the Court. No hard and fast rules can be prescribed as to when and at what stage this discretion should be exercised. The anxiety for justice is paramount and should be kept in view. The Court should be unmindful of the fact of the use of

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the discretion in favour or against any party. The principle that such evidence should not demolish the case set up by the accused in his defence, if he has done so should be present in the mind of the judge at the time when he takes a decision. The powers of the Court under Section 311 which are very wide cannot be limited. The discretion can be exercised by the Court at any stage of the case, but on justifiable grounds". (emphasis added)."

11. In view of the law settled by the Hon’ble Supreme Court in the cases referred to above, this Court finds no illegality or perversity in the impugned order dated 24.07.2024 passed by learned Additional Sessions Judge, Ludhiana. Accordingly, present revision petition is dismissed being bereft of merit.

[HARPREET SINGH BRAR]
JUDGE

14.08.2024
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Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No