



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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CRM No.38071 of 2024 in/and
CRM-M No.44086 of 2024
Date of Decision: 19.09.2024

Deepak ... Petitioner

Versus

State of Haryana ... Respondent

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present: Mr. Sushil Jain Advocate,
for the applicant-petitioner.

Mr. Arjun Lakhanpal, Addl. AG, Haryana,
for the respondent-State.

MANISHA BATRA, J. (Oral)

CRM No.38071 of 2024

The application is allowed, as prayed for and Annexures P-7
to P-9 are taken on record.

CRM-M No.44086 of 2024

1. Prayer in this petition has been made by the petitioner for
quashing of order dated 09.08.2024 passed by the Court of learned
Additional Sessions Judge, Fast Track Special Court, Sonapat in Sessions
case bearing No.SC/168 of 2024 titled as *State v. Deepak* arising out of
FIR No.67 dated 26.02.2024 registered under Sections 377 and 506 of
IPC read with Section 4 of Protection of Children from Sexual Offences

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Act, 2012 (For short “POCSO Act”) at Police Station Sector 27, Sonipat, District Sonipat, whereby an application filed under Section 311 of Cr.P.C. by the petitioner for recalling the victim for his 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 petitioner is facing trial in the aforementioned FIR which had been registered against him on the allegations that on 22.02.2024, he had committed act of carnal intercourse against the order of nature with the minor victim and had extended threat to kill him. The victim had appeared into the witness box as PW-2 on 17.05.2024. Thereafter, the petitioner moved application under Section 311 of Cr.P.C. for recalling the victim by submitting that some material questions were left to be asked to him at the time of conducting his cross-examination. It is also submitted that the victim had sworn an affidavit regarding the incident which could not be put to him. It is also submitted that infact the victim was under the pressure of the police when his statement had been recorded. The learned trial Court after considering the reply as filed by the respondent-State and hearing the contentions raised by both the sides, dismissed this application by passing the impugned order.

3. Feeling aggrieved by the impugned order, the petitioner has filed this petition.

4. It is submitted by learned counsel for the petitioner that as on 01.06.2024, the victim had sworn an affidavit and the contents of the same

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proved that the occurrence as narrated in the FIR had not taken place in the manner as alleged and a false case was registered against the petitioner. The father of the victim had not supported the prosecution version at all. Some important questions were left to be put to PW-2 at the time of conducting his cross-examination. In view of the circumstance that the victim had sworn an affidavit in favour of the petitioner, after his appearing as a witness coupled with the fact that neither any medico legal evidence had been collected or produced on record to show the factum of any act of carnal intercourse against the order of nature having been committed by the petitioner with the victim, the petition deserves to be allowed. It is further argued that the learned trial Court by dismissing the application committed a grave error. Therefore, it is urged that the petition be allowed and an opportunity may be granted to the petitioner to cross-examine the victim by recalling him for that purpose.

5. Per contra, learned State counsel who has advance notice of the petition and is ready to argue the matter, has submitted that a proper opportunity had been given to the petitioner to effect cross-examination of the victim and he was subjected to lengthy cross-examination. It is argued that the petitioner wants to abuse the process of law by seeking recall of victim at this stage and, therefore, it is urged by him that the petition does not deserve to be allowed.

6. At the outset, it may be mentioned that the well settled proposition of law is that though the powers under Section 311 of Cr.P.C.

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can be invoked by the Court to meet the ends of justice and for strong and valid reasons but they should be exercised with great caution and circumspection. This provision confers vast discretion upon the Court and is expressed in the widest possible terms. The discretionary power under the said Section can be invoked to meet the ends of justice and has to be exercised judicially and not arbitrarily or capriciously. The provisions of this Section should be exercised consistently with the provisions of the Code and the criminal law. Reference in this regard can be made to the judgment of the Hon'ble Supreme Court passed in '*State vs. N. Seenivasagan, AIR 2021 Supreme Court 2441*', wherein it has been observed that the true test for the purpose of this Section is, whether it appears to the Court that the evidence of such person who is sought to be recalled is essential for just decision of the case and to '*Manju Devi Vs. State of Rajasthan, (2019) 6 SCC 203*', wherein it was observed that the discretionary powers under section 311 of Cr.P.C. are intended to ensure that every necessary and appropriate measure is taken by the Court to keep the record straight and to clear any ambiguity in so far as the evidence is concerned as also to ensure that no prejudice is caused to anyone including the accused.

7. Undoubtedly, an application under Section 311 of Cr.P.C. cannot be allowed only to fill up lacuna in the case of the prosecution or of the defence or to the disadvantage of the accused, or to cause serious prejudice to the defence of the accused and even to give an unfair advantage to the opposite party. However, such power can certainly be and must be

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exercised when the evidence which is likely to be tendered by a witness is germane to the issue involved, while keeping in mind that opportunity of rebuttal, however, must be given to the other party. On applying these principles of law to the instant case, where the petitioner is seeking recall of the victim for the purpose of conducting his cross examination, let us consider as to whether he deserves recalling of the aforementioned witness for the purpose of his cross examination?

8. Learned counsel for the petitioner has placed on record Annexures P-7, P-8 and P-9. Annexures P-8 and P-9 are copies of statements of the father and mother respectively of the victim as recorded before the trial Court. A perusal of these statements shows that both these witnesses did not support the version of the prosecution while appearing as such and deposed that no wrong act had been committed by the petitioner with their son and infact their son had sustained injuries in a scuffle which had taken place between the petitioner and him. The family of the petitioner was ready to compensate them but since they subsequently refused to do so, therefore, the FIR was lodged. They are also shown to have stated that the victim was under the pressure of police when he made deposition in the Court. Annexure P-7 is copy of statement of the victim who is shown to have deposed that the petitioner had committed wrong act with him for a period of about one hour on 22.02.2024. Copy of medico legal report of the petitioner is also placed on record and a perusal of the same reveals that there was no evidence of any sexual abuse. The sexual organs of the victim

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were found to be anatomically normal and no injuries were found to be present there. Meaning thereby, there was no medical evidence of the victim having subjected to sodomy.

9. Further as already discussed, it is apparent that parents of the victim who were material witnesses of the prosecution have not supported the prosecution version. Though the victim is shown to have stated that some wrong act had been committed by the petitioner with him on the fateful day but subsequently, he is shown to have sworn an affidavit (Anneuxre P-3) to the effect that the FIR was lodged by him under pressure of the police and nothing had happened with him at any stage and no wrong act had committed with him at any point of time. He is also shown to have stated that his statement before the Court was recorded on 17.05.2024 under the pressure of the police. It is also revealed that at the time when arguments on the application under Section 311 of Cr.P.C. were heard by the trial Court, the counsel appearing on behalf of the complainant party had given no objection if the application of the petitioner was allowed. It appears that the victim now intends to make statement in terms of the contents of the affidavit sworn by him on 01.06.2024. A criminal trial is a voyage of discovery in which truth is quest. A duty is cast upon the Court to explore every avenue open to him in order to discover the truth and to advance the cause of justice. The petitioner seeks recall of the victim for the purpose of his further cross-examination by taking a plea that some important questions were left to be put to this witness and the victim/complainant party has no

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objection to the same. In such circumstances, this Court is of the considered opinion that it is necessary to permit the petitioner to cross-examine PW-2 i.e. the victim not only to elicit the truth but also for the just decision of the case. Accordingly, the petition is allowed. The impugned order is set aside and the prayer made by the petitioner to recall PW-2 for conducting his further cross-examination is allowed. Direction is given to the learned trial Court to recall of PW-2 for that purpose. It is, however, clarified that the petitioner as well as learned trial Court shall ensure that cross-examination of PW-2 shall be conducted on the same day when he appears before the trial Court and no further adjournment shall be granted for that purpose and the petitioner would not be allowed to do any act to protract the proceedings pending before the learned trial Court.

19.09.2024
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(MANISHA BATRA)
JUDGE

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