

**CRR-551-2020 (O&M)****1****IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH****CRR-551-2020 (O&M)****Reserved on : 22.01.2025****Date of Pronouncement : 04.02.2025**

Gulzar Hasan

...Petitioner

Versus

State of Punjab and another

...Respondents

**CORAM: HON'BLE MS. JUSTICE KIRTI SINGH**Present: Mr. K.S. Kahlon, Advocate  
for the petitionerMr. R.S. Thind, DAG Punjab  
for respondent No. 1Ms. Jasneet Mehta, Advocate  
for respondent No. 2

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**KIRTI SINGH, J.**

1. The jurisdiction of this Court has been invoked against the impugned order dated 06.02.2020 passed by learned Additional Sessions Judge, Amritsar whereby the applications moved by the revisionist-petitioner under Section 311 Cr.P.C, dated 12.12.2019 and 04.01.2020 were dismissed.

2. The factual matrix as culled out from the instant petition is that the minor sister of the petitioner was enticed away by the accused-respondent No.2, who was already married and with children, on the false pretext of marriage. An FIR dated 08.02.2018 was lodged and meanwhile, a writ of habeas corpus was preferred and the custody of the prosecutrix was restored to her parents. However,

during the pendency of the said petition, she was enticed away again and had to be



recovered by constituting a special team and thereafter, her custody was finally handed over to the petitioner by this Court vide order dated 08.02.2019. Meanwhile, pursuant to the investigation in the afore-referred FIR, the statement of the prosecutrix was got recorded under Section 164 Cr.P.C. on 01.05.2018, wherein she leveled specific allegations against the petitioner. However, when she was produced before the trial Court for her deposition as a prosecution witness, she resiled from her statement and turned hostile. Thereafter, an application for her re-examination, as also one for production of certain documents as additional evidence, were moved, which were dismissed by the trial Court vide impugned order dated 06.02.2020, and aggrieved from the same, the present revision petition has been filed.

3. Learned counsel for the petitioner *inter alia* submits that the applications filed under Section 311 of Cr.P.C. were erroneously dismissed by the trial Court. It is contended that the prosecutrix is a special child, who out of fear and pressure from the accused, turned hostile and therefore, it is vital to re-examine her with the help of documents being sought for in the second application, including copy of the memo of the protection petition filed by the accused-respondent and the prosecutrix. Hence, by dismissing the said applications, the trial Court has gravely prejudiced the prosecution case and thus the impugned order deserves to be set aside.

4. *Per contra*, learned counsel for respondent No. 2 submits that the grounds on which re-examination of the prosecutrix was sought were ill founded since she, who was also cross-examined at length by the public prosecutor during her testimony as a witness, had turned hostile. Furthermore, she could have been



and now when the trial is at the fag end, the same is being sought to be delayed by way of filing such applications.

5. Learned State counsel, *inter alia*, confirms the factum that even after being cross-examined at length, the prosecutrix chose to resile from her statement made to the police. He further submits that the trial is at the stage of defence evidence and final arguments.

6. Having heard the contentions and perused the record, it comes out that the petitioner wanted the re-examination of his sister, the prosecutrix, with the help of certain documents, also sought for in the application filed under Section 311 of Cr.P.C., which was dismissed by the learned trial Court.

7. Before adjudicating the matter, it would be apposite to refer to the provision under Section 311 Cr.P.C. which reads thus:

*“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. The Hon'ble Supreme Court, in **V. N. Patil Vs. K. Niranjana, 2021 (2) R.C.R. (Criminal) 310**, while examining the scope of Section 311 of Cr.P.C observed that:

*"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. This principle has also been reiterated in ***Swapan Kumar Chatterjee v. Central Bureau of Investigation, 2019(14) SCC 328***, the relevant paras of which read thus:

*"11. It is well settled that the power conferred under Section 311 should be invoked by the court only to meet the ends of justice. The power is to be exercised only for strong and valid reasons and it should be exercised with great caution and circumspection. The court has vide power under this section to even recall witnesses for re-examination or further examination, necessary in the interest of justice, but the same has to be exercised after taking into consideration the facts and circumstances of each case. The power under this provision shall not be exercised if the court is of the view that the application has been filed as an abuse of the process of law."*

10. In ***Rajaram Prasad Yadav Vs. State of Bihar and another, 2013 SCC Online SC 577***, the Hon'ble Supreme Court, while upholding the observations made by the trial Court when dismissing the applications filed under Section 311 Cr.P.C. by the complainant for his re-examination, observed that "the trial Court, had the opportunity to observe the demeanour of the second respondent, while tendering evidence which persuaded the trial Court to reach the said conclusion and that deserves more credence while examining the correctness of the said order passed by the trial Court." Furthermore, while expatiating on the exercise of



powers under the said provision, it was held that:

*“14. A conspicuous reading of Section 311 Criminal Procedure Code would show that widest of the powers have been invested with the Courts when it comes to the question of summoning a witness or to recall or re-examine any witness already examined. A reading of the provision shows that the expression "any" has been used as a pre-fix to "court", "inquiry", "trial", "other proceeding", "person as a witness", "person in attendance though not summoned as a witness", and "person already examined". By using the said expression "any" as a pre-fix to the various expressions mentioned above, it is ultimately stated that all that was required to be satisfied by the Court was only in relation to such evidence that appears to the Court to be essential for the just decision of the case. Section 138 of the Evidence Act, prescribed the order of examination of a witness in the Court. Order of re-examination is also prescribed calling for such a witness so desired for such re-examination. Therefore, a reading of Section 311 Criminal Procedure Code and Section 138 of the Evidence Act, insofar as it comes to the question of a criminal trial, the order of re-examination at the desire of any person under Section 138, will have to necessarily be in consonance with the prescription contained in Section 311 Criminal Procedure Code. It is, therefore, imperative that the invocation of Section 311 Criminal Procedure Code and its application in a particular case can be ordered by the Court, only by bearing in mind the object and purport of the said provision, namely, for achieving a just decision of the case as noted by us earlier. The power vested under the said provision is made available to any Court at any stage in any inquiry or trial or other proceeding initiated under the Code for the purpose of summoning any person as a witness or for examining any person in attendance, even though not summoned as witness or to recall or re-examine any person already examined. Insofar as recalling and re-examination of any person already examined, the Court must necessarily consider and ensure*



*that such recall and re-examination of any person, appears in the view of the Court to be essential for the just decision of the case. Therefore, the paramount requirement is just decision and for that purpose the essentiality of a person to be recalled and re-examined has to be ascertained. To put it differently, while such a widest power is invested with the Court, it is needless to state that exercise of such power should be made judicially and also with extreme care and caution.”*

11. Reverting to the case at hand, it so transpires that the petitioner moved an application under Section 311 Cr.P.C. after the trial had matured to the stage of defence evidence and final arguments, by vehemently contending that the prosecutrix had turned hostile because of fear. However, a bare reading of the judicial file showcases that when the victim did not support the prosecution case, she was cross-examined at length, but was not confronted with any such documents when a fair opportunity to do so was accorded. Moreso, insofar as the submission of the prosecutrix being a special child is concerned, it was duly recorded by this Court in the order dated 08.02.2019, passed in CRWP-287-2018 (Annexure P-9), that she “has average intelligence and she does not have any mental retardation.”

12. Trite to say that though the Court is vested with the power to recall witnesses or permit placing on record additional evidence at any stage, however, it must be cautioned to ensure that the same is not sought to be invoked only to fill up the lacunas left behind in a case.

13. In light of the foregoing discussion and in view of the judgments referred to herein-above, this Court is of the considered view that the impugned

order was passed after taking into account all the facts and circumstances as also



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the arguments advanced and evidence produced before it. The same being speaking, well reasoned and based upon correct appreciation of facts, applicable law and judicial precedents, needs no interference. As a corollary, the present revision petition stands dismissed.

14. Pending miscellaneous application(s), if any, also stands disposed of.

(KIRTI SINGH)  
JUDGE

04.02.2025  
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| Whether speaking/reasoned | Yes/No |
| Whether reportable        | Yes/No |