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**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

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Date of decision : 25.02.2025

Satish

..... Petitioner

V/S

State of Haryana

..... Respondent

CORAM : HON'BLE MS. JUSTICE AMARJOT BHATTI

Present: Mr. Aditya Sharma, Advocate for
Mr. Abhinav Gupta, Advocate for petitioner.

Ms. Aditi Girdhar, AAG, Haryana.

Mr. Lakshay Goel, Advocate,
Mr. Yuvraj Attri, Advocate and
Mr. Pushkal Saroch, Advocate for respondent No.2.

AMARJOT BHATTI J. (ORAL)

1. Petitioner-Satish filed present petition under Section 482 Cr.P.C. for setting aside impugned order dated 13.02.2024 (Annexure P-8) whereby application filed under Section 311 Cr.P.C. for recalling the victim-PW1 was dismissed by learned trial Court in SC-175-2020 arising out of FIR no.394 dated 07.09.2020 under Section 4 of POCSO Act, registered at Police Station Khol, Rewari or any other direction which the court may deem fit in the given facts and circumstances of the case.

2. As per facts of the case, FIR was lodged on the statement of father of the victim who stated that on 07.09.2020 at about 7:15 PM, he was present in the house when his youngest daughter aged about 10 years went to the house in neighbourhood for playing. After some time, she returned crying and explaining wrong act taken place with her by touching her private parts. The mother of the

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victim took her inside the room and checked her and found blood stains. The mother of the victim raised hue and cry and went to the house of accused. At the instance of victim who explained it with signs, enquiry was made at his own level. The petitioner had committed wrongful act with his daughter who is unable to speak and is mentally challenged girl.

3. After the completion of investigation, challan (Annexure P-1) was presented in this case and chargesheet was framed under Section 6 of POCSO Act. Prosecution examined 15 witnesses and closed the evidence on 17.10.2023. Statement of petitioner/accused was also recorded under Section 313 Cr.P.C. At this stage, petitioner/accused filed application under Section 311 Cr.P.C. (Annexure P-7) for recalling the victim who was examined as PW-1. Said application was declined by passing impugned order dated 13.02.2024 (Annexure P-8). Feeling aggrieved of this order, present petition has been filed.

4. Learned counsel for petitioner argued that application has been declined by learned trial Court having been filed at a belated stage. It is settled position of law that application under Section 311 Cr.P.C. can be filed at any stage. The learned trial Court has wrongly arrived at the conclusion that interpreters namely Mr. Sanjeev and Ms. Payal had been examined. In fact, they were never cited as prosecution witnesses. Statement of the victim was neither recorded under Section 161 Cr.P.C. nor under Section 164 Cr.P.C. Learned trial Court has given undue importance to Section 33 (5) of POCSO Act, where it is provided that the trial Court shall ensure that the child is not called repeatedly to testify in the Court. In fact re-examination of victim (PW-1) is material to determine the truth and for proper adjudication of the case. Learned trial Court has failed to consider the provisions of Section 119 of Indian Evidence Act nor complied the

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provisions of Section 38 of POCSO Act. Under these circumstances, application was filed under Section 311 Cr.P.C. to recall the victim (PW-1) and the said application has been declined without appreciating the aforesaid facts of the case. Hence, it is prayed that impugned order dated 13.02.2024 (Annexure P-8) passed by learned trial Court may be set aside and the application filed by petitioner before learned trial Court under Section 311 Cr.P.C. to recall victim (PW-1) for further cross-examination may be allowed.

5. On the other hand, learned counsel representing State opposed the present petition taking the stand that facts and circumstances of the case were rightly considered by learned trial Court while disposing of the application under Section 311 Cr.P.C. The victim is already examined as PW-1 and there is no valid reason to recall the victim for further cross-examination. The trial in this case is at fag end. The application is filed with oblique motive. Therefore, petition filed by petitioner is without merits.

6. I have considered the arguments and have gone through the record carefully. As per facts of the case, victim is 10 years old child who is dumb and is mentally challenged. The FIR has been lodged on the statement of father of the victim. After completion of investigation, challan was presented. All prosecution witnesses were examined and the case is at fag end when application is filed to recall the victim (PW-1) as she was allegedly examined in gross violation of mandatory provisions of law. I have gone through the impugned order dated 13.02.2024 (Annexure P-8) and have also gone through the statement of the victim recorded as PW-1 which clearly shows that the statement was recorded with the assistance of father of the victim and she was duly cross-examined by counsel for accused in question and answer form. When the



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statement was recorded on 05.02.2021 no objection was raised by counsel for accused. I have gone through the statements of other witnesses i.e. father of the victim-PW7 (Annexure P-3), mother of the victim-PW-8 (Annexure P-4), grandmother of the victim-PW10 (Annexure P-5) and cousin of grandmother-PW12 (Annexure P-6). All these witnesses were declared hostile by learned Public Prosecutor as a result the cross-examination was conducted by Public Prosecutor and further cross-examined by counsel for accused. Learned trial Court while dealing with the application under Section 311 Cr.P.C. to recall the victim as PW-1 rightly referred to the provisions of Section 33 (5) of POCSO Act where it is specifically mentioned that Special Court shall ensure that the child is not called repeatedly to testify in the Court. There is specific provisions dealing with the recording of statement with the assistance of interpreter or expert. Section 38 of POCSO Act, 2012 runs as under:-

“ Assistance of an interpreter or expert while recording evidence of child.—(1) wherever necessary, the Court may take the assistance of a translator or interpreter having such qualifications, experience and on payment of such fees as may be prescribed, while recording the evidence of the child.

(2) If a child has a mental or physical disability, the Special Court may take the assistance of a special educator or any person familiar with the manner of communication of the child or an expert in that field, having such qualifications, experience and on payment of such fees as may be prescribed to record the evidence of the child.”

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7. In the case in hand, testimony of victim age about 13 years PW-1 (Annexure P-2) was recorded with the assistance of her father. Said statement was recorded in the presence of counsel for accused and was duly cross-examined. Since no objection was raised at that point of time, therefore, I do not find any reason to recall the victim (PW-1) for further cross-examination. So far as the testimony of victim and other witnesses are concerned, the same will be appreciated by learned trial Court at appropriate stage.

All facts and surrounding circumstances have been duly considered by the trial Court. Therefore, I do not find any reason to interfere in the impugned order dated 13.02.2024 (Annexure P-8) passed by learned trial Court and the same is accordingly upheld. Petition filed by petitioner is accordingly declined.

(AMARJOT BHATTI)
JUDGE

25.02.2025.*Sunil Devi*

Whether speaking/reasoned:	Yes/No
Whether Reportable:	Yes/No