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

CRM-M-29664-2025

Date of Decision:- 12.08.2025

JAWAHAR PASWAN

...Petitioner

Vs.

STATE OF HARYANA

...Respondent

CORAM:- HON'BLE MRS. JUSTICE AMARJOT BHATTI

Present:- Mr. Abhimanu Jangra, Advocate for the petitioner.
(through V.C.)

Ms. Aditi Girdhar, AAG, Haryana.

AMARJOT BHATTI, J.

1. Petitioner has filed instant petition under Section 482 Cr.P.C. for quashing of order dated 14.05.2025 (Annexure P-7) and order dated 19.09.2024 (Annexure P-3) passed by learned Additional Sessions Judge, Faridabad in Sessions Case No.300-2023 in FIR No.350 dated 04.05.2023 under Sections 377, 506 IPC and Section 6 of POCSO Act registered at Police Station Sector-8, District Faridabad whereby right of petitioner to cross examine the prosecutrix/victim has been closed with further prayer to give one opportunity to the petitioner to cross-examine the victim in the aforesaid case.

2. Learned counsel for the petitioner argued that petitioner is only accused facing trial in the aforesaid case. Case is fixed for prosecution



evidence. He is in custody since 04.05.2023. Copy of FIR No.350 dated 04.05.2023 is placed on record as Annexure P-1. Testimony of prosecutrix as PW1 was recorded in chief on 19.09.2024. Counsel for accused/petitioner expressed his inability to cross-examine the witness and on this it was treated as 'Nil'. Statement of victim recorded as PW1 is Annexure P-2 and the copy of zimni order dated 19.09.2024 is Annexure P-3. After passing of this order, petitioner/ accused filed application under Section 348 of Bharatiya Nagarik Suraksha Sanhita, 2023 (erstwhile Section 311 Cr.P.C.) (Annexure P-6). Without any justification, said application was declined by passing impugned order dated 14.05.2025 (Annexure P-7). It is pointed out that statement of other prosecution witnesses have been recorded. Copy of statement of mother of the victim as PW2 is Annexure P-4, who did not support the prosecution case. In order to bring out the truth, cross-examination of victim as PW1 is material. Petitioner will suffer great prejudice in-case, he is not given an opportunity to cross-examine the victim who is star witness in the present case. It is, therefore, submitted that petitioner may be granted one opportunity to cross-examine the victim as PW1.

3. Status report has been filed and the report is also called from the concerned trial Court. Learned counsel representing State pointed out that victim was examined as PW1 on 19.09.2024 and at that stage, counsel representing accused refused to cross-examine the witness without any valid justification. Therefore, considering the provision of Section 33 of Protection of Children from Sexual Offences Act, the cross-examination of



victim could not be deferred and it was treated as 'Nil'. Thereafter, present petitioner filed application under Section 348 Bharatiya Nagarik Suraksha Sanhita, 2023 to recall the witness for cross-examination and said application was rightly rejected vide impugned order dated 14.05.2025 (Annexure P-7). Learned counsel representing State pointed out that this application is moved as mother of victim as PW2 has already turned hostile, and she did not support prosecution case and for this reason, later-on application under Section 348 Bharatiya Nagarik Suraksha Sanhita, 2023 (erstwhile Section 311 Cr.P.C.) has been filed to recall the victim for cross-examination. All the facts and circumstances of the case were duly considered and appreciated by the trial Court and the application was rightly declined vide order dated 14.05.2025 (Annexure P-7). It is submitted that petition filed by the petitioner is without merits.

4. I have considered the arguments and have gone through the record carefully. As per the facts of the present case, victim in this case is a minor child aged about 8 years. After completion of investigation, challan was presented. Charges were framed and the prosecution evidence is under progress. It is matter of record that the victim appear in the Court on 19.09.2024 for recording of her statement. Examination in chief of the victim was recorded in camera as PW1. Her examination-in-chief was completed and thereafter, learned defence counsel was called upon to cross-examine the victim. Initially counsel for accused was insisting to record the statement of the victim since accused was in custody. Once the testimony of victim in examination-in-chief was completed, the defence counsel



requested to defer for cross-examination. Perusal of statement indicates that counsel for accused could not give any valid reason to justify his request to defer the cross examination. Learned trial Court by relying upon the provision of Section 33 of POCSO Act declined to defer the cross-examination and finally it was treated as Nil. Detailed zimni order dated 19.09.2024 is Annexure P-3.

5. Later-on, counsel for accused filed application under Section 348 Bharatiya Nagarik Suraksha Sanhita, 2023 (erstwhile Section 311 Cr.P.C.) to recall the witness for cross-examination (Annexure P-6) which was again declined by impugned order dated 14.05.2025 (Annexure P-7). While deciding this application, learned trial Court rightly considered that at present mother of the victim has been examined as PW2 on 29.11.2024, where she did not support the prosecution version and on the request of Public Prosecutor, she was cross-examined. Her statement is Annexure P-4. After recording the statement of victim on 19.09.2024 there was no effort on the part of the petitioner to file application for recalling the witness for cross-examination. After recording of testimony of mother of the victim on 29.11.2024, this application was filed much later to recall the victim for cross-examination. Learned trial Court relied upon the provision of Section 33 (5) of POCSO Act, which runs as under:-

“Section 33 Procedure and powers of Special Court.-

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(5) The Special Court shall ensure that the child is not called repeatedly to testify in the Court.”



Therefore, when the learned counsel representing petitioner/accused was given an opportunity to cross-examine the victim he was required to show some valid convincing reason for seeking a date to cross-examine the victim. Purpose of Section 33 (5) of POCSO Act is to prevent harassment to the child victim. The other reason is the accused or his associates do not gain time to win over the witness. The petitioner cannot be permitted to take benefit of his own act and conduct firstly by not cross examining the witness and later when he managed to influence the family then to recall the witness for cross-examination. Thus, at this stage, petitioner cannot be permitted to recall the witness time and again for cross-examination. Order passed by the trial Court dated 14.05.2025 (Annexure P-7) is fully justified and I do not find any reason to interfere in the same. Consequently, finding no merits in the petition filed by the petitioner, same is accordingly declined.

5. Pending miscellaneous application(s), if any, stand disposed of accordingly as well.

(AMARJOT BHATTI)
JUDGE

12.08.2025

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