



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

CRR-2536-2019 O&M)
Date of Decision:28.05.2025

Medha Dua

.....Petitioner

Versus

State of Haryana and another

.....Respondents

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present:- Ms. Medha Dua, petitioner in person.

Mr. Vishal Kashyap, DAG, Haryana.

Mr. Saurabh Garg, Advocate for respondent No.2.

JASGURPREET SINGH PURI J.(Oral)

1. The present revision petition has been filed for setting aside the order dated 22.08.2019 passed by learned Additional Sessions Judge, Kaithal whereby an application filed by the petitioner under Section 391 of Cr.P.C. for adducing additional evidence was dismissed.

2. The petitioner appearing in person submitted that the present revision petition has been filed under Section 401 read with Section 482 of Code of Criminal Procedure (Cr.P.C.) in exceptional circumstances where the impugned order is liable to be set aside. It is contended that the application filed by the petitioner under Section 391 Cr.P.C. for adducing additional evidence was not properly considered by learned Additional Sessions Judge, Kaithal and was dismissed particularly in light of the fact that an earlier application filed under Section 311 Cr.P.C. was also dismissed.



3. Petitioner who has appeared in person submitted that it is a case where respondent-accused was acquitted by learned Trial Court due to sheer negligence on the part of the prosecution as well as the police. She further submitted that the allegations against the accused were with regard to the fact that he had committed rape upon the petitioner repeatedly at the time when she was minor and of the age of about 16 years in the year 2014 and even prior to that from the year 2012 the respondent-accused had committed wrong act upon her. The date of occurrence in the present case on the basis of which the FIR was registered was 24.01.2014 and rape was committed in a *Santro* car which belonged to the respondent-accused. She further submitted that during the course of investigation, the police came to the conclusion that the aforesaid car was not involved in the case, whereas the respondent No.2 was the main accused and he was the owner of the car, regarding which reliance has been placed at Annexure P-3, issued by the Registering Authority (MV), Kaithal, which shows that respondent No.2-accused was the owner of the car, although the same is shown to be in the year 2016 but it was that very car in which the offence was committed, but the police, in connivance with the accused, had so investigated the case by stating that the car was not involved.

4. She further submitted that although it is a settled law that a case cannot be reopened at a later stage but at the same time, the circumstances of the present case are totally different, wherein the petitioner is a helpless lady whose father had passed away prior to the occurrence and her mother was under acute depression and also suffering from schizophrenia. The petitioner had gone to the police station along with her maternal grandfather (Nana) and maternal



uncle (Mama) after narrating the incidents. The prosecution deliberately did not cite the maternal grandfather as a prosecution witness for reasons best known to the prosecution and that is why an earlier application was moved by her in this regard, which was dismissed but unfortunately, the aforesaid maternal grandfather (Nana) has now passed away. She submitted that the police did not investigate the case properly, and the petitioner was a minor at that point of time and had no knowledge of any legal proceedings or law. She had no support from her family, was helpless and was not being assisted by anyone. Due to this reason and the failure of the prosecution to discharge its duties in accordance with law, the accused was acquitted. She further submitted that however an appeal is already pending before the lower Appellate Court and in aforesaid appeal an application was earlier filed under Section 311 of Cr.P.C., which was although dismissed but as so guided to her that she ought to have filed an application under Section 391 of Cr.P.C. and therefore even if her earlier application under Section 311 of Cr.P.C. was dismissed, she still filed an application under Section 391 of Cr.P.C. and the same was dismissed on one of the grounds that the earlier application under Section 311 of Cr.P.C. was dismissed and revision filed against that order was withdrawn by her.

5 The petitioner appearing in person further submitted that she being unaware of the legal provisions and being only a minor at that point of time and her mother was suffering from various medical ailments, was not able to assist the prosecution during the trial. She contended that she could not have been non-suited merely on the ground that allowing the application under Section 391 of Cr.P.C. would amount to reopening of the case, particularly when the



documents sought to be adduced as additional evidence at the appellate stage go to the root of the matter. Therefore, the learned Appellate Court has wrongly and erroneously dismissed her application.

6. She submitted that three-fold prayers were made in the application: Firstly, that the car in which the offence was committed was required to be recovered, along with the documents establishing that the accused was the owner of the car, which had not been proved in evidence at the time of trial. Secondly, that the maternal grandfather (Nana) was required to be examined and thirdly that the medical record of the petitioner and her mother was required to be produced on record so as to show that her mother was suffering from *schizophrenia* and the petitioner, being a minor, was not able to cope up with the entire situation being highly traumatic in nature. She also submitted that so far as the second prayer regarding the summoning of her maternal grandfather is concerned, the same cannot sustain as now her maternal grandfather has passed away. However, the remaining two prayers do sustain even at the appellate stage.

7. On the other hand, the learned counsel appearing on behalf of respondent No. 2 submitted that learned Additional Sessions Judge has rightly dismissed the application on the ground that an earlier application filed under Section 311 of Cr.P.C. was dismissed and if the present application is now to be allowed, then it will reopen the entire case, which is not permissible at the appellate stage. Therefore, the present petition filed by the petitioner is liable to be dismissed

8. I have heard the learned State counsel, learned counsel for respondent



No.2 as well as petitioner who has appeared in person.

9 It is a case where allegations of rape were made by the petitioner with regard to an incident dated 24.01.2014. However, as per the petitioner, the alleged rape had been taking place about one to two years prior to that, i.e., from the year 2012, when the petitioner was admittedly a minor. The father of the petitioner was not alive. The mother of the petitioner was stated to be suffering from schizophrenia and there was no other person to help the petitioner, being a minor. The maternal grandfather, regarding whom she has stated that he had gone to the police station, has also now passed away. The only two prayers made by the petitioner in this regard are: firstly, with regard to adducing additional evidence at the appellate stage pertaining to the medical reports of the petitioner and her mother and secondly, the car and the ownership documents pertaining to the ownership of the car, regarding which, as per the investigation, the car was not involved in the case. Learned Additional Sessions Judge, Kaithal, has declined to interfere in application under Section 391 Cr.P.C. primarily on the ground that earlier application filed under Section 311 of Cr.P.C. was dismissed. The application that ought to have been filed by the petitioner before the learned Appellate Court was under Section 391 of the Cr.P.C., and not under Section 311 of the Cr.P.C.. Therefore, the mere fact that petitioner's earlier application filed under Section 311 of Cr.P.C. was dismissed would not mean that any embargo has been created for filing a subsequent application under Section 391 of Cr.P.C., which is an application filed under the correct provision of law.

10. Be that as it may, the facts and circumstances of the present case



suggest that the learned Additional Sessions Judge, Kaithal, ought to have considered the remaining two pleas particularly, as to whether those pleas go to the root of the matter or not. Merely observing that it would amount to reopening the case cannot be a valid ground to reject the application unless supported by cogent and strong reasons. In cases where a prayer for adducing additional evidence is made even at the appellate stage and such evidence goes to the root of the matter, an application filed under Section 391 of the Cr.P.C. cannot be dismissed solely on that ground. However, that is precisely the basis on which the learned Additional Sessions Judge, Kaithal, has dismissed the application. Considering the aforesaid totality of the circumstances, this Court is of the considered view that the present petition deserves to be allowed.

11. Consequently, the present petition is allowed. The impugned order dated 22.08.2019, is hereby set aside. The matter is remanded back to learned Additional Sessions Judge, Kaithal, to pass a fresh order on merits on the application filed under Section 391 of Cr.P.C.. The fresh order shall be passed within a period of three months from today, with a fresh application of mind and uninfluenced by the impugned order dated 22.08.2019 and by the present order passed by this Court.

12. A copy of this order be sent to the learned Additional Sessions Judge, Kaithal.

(JASGURPREET SINGH PURI)
JUDGE

28.05.2025

shweta

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