



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

(110)

**CRR No. 1893 of 2025 (O&M)
Date of Decision: 04.8.2025**

Karan Singh @ Bittu and another

.....Petitioners

Versus

State of Haryana

.....Respondent

CORAM: HON'BLE MS. JUSTICE KIRTI SINGH

Present: Mr. Narender Kaajla, Advocate
for the petitioner.

KIRTI SINGH, J. (ORAL)

1. The instant revision petition has been filed against the order dated 19.5.2025 passed by the learned Additional Sessions Judge, Bhiwani, in case FIR No. 203 dated 13.7.2024 under Sections 137(2), 351(3), 64(2) (m), 65(1), 74, 75(2), 76, 78, 96 of BNS, 2023 and Section 6 of the POCSO Act, 2012 registered at Police Station Bawani Khera, District Bhiwani, whereby an application preferred by accused-petitioner Mukesh under Section 311 Cr.P.C. for recalling the prosecution witnesses i.e. PW-7, PW-8 and PW-9, has been dismissed.

2. The brief factual matrix is that the aforesaid FIR was lodged on a complaint moved by the complainant alleging therein that on 4.7.2024 and 5.7.2024, petitioner No. 2 committed wrong act with his minor daughter, while she was coming home after attending the school. The trial commenced and charges were framed against the petitioners on 29.10.2024. It was thereafter when the deposition of PW-7 to PW-9 was recorded, the instant application under Section 311 Cr.P.C. for recalling of the said witnesses, was moved, which was dismissed vide impugned order dated 19.5.2025.



3. Learned counsel for the petitioner *inter alia* submits that the learned trial Court concerned has erred in dismissing the instant application as the material witnesses i.e. PW-7 to P-9 have been examined in the absence of Mr. B.S.Panghal, Advocate representing petitioner No. 1, who was out of station on the date of hearing i.e. 23.1.2025 and the said fact was also brought to the notice of the learned trial Court. Furthermore, earlier petitioner No. 1 was defended by Ms. Babli Panwar, Advocate and petitioner No. 2 was defended by Mr. Arvind Singla, Advocate. However, on 23.1.2025 itself, petitioner No. 1 engaged Mr. B.S.Panghal, Advocate and Mr. Rajiv Panghal, Advocate. Mr. Rajiv Panghal, Advocate submitted his power of attorney on behalf of petitioner No. 1 and requested Ms. Babli Panwar, Advocate to cross-examine the formal witnesses on his behalf and accordingly the Legal Aid Counsel cross-examined the witnesses before lunch break. It was thereafter the prosecution produced PW-7 to PW-8 after lunch break who were examined in the absence of counsel for petitioner No. 1. It has further been submitted that the learned trial Court has wrongly marked the presence of Rahul Panghal, Advocate as counsel for accused-petitioner No. 1 Karan Singh @ Bittu, despite the fact that he was not present in the Court at that time. It has also been argued that when the case was fixed for recording of the statements of the accused under Section 313 Cr.P.C, the prosecution moved an application under Section 311 Cr.P.C. and vide order dated 23.7.2025, the said application was allowed by the learned trial Court, whereas the application moved by the accused under Section 311 Cr.P.C. was dismissed vide the impugned order. Thus, it is submitted that the impugned order also suffers from the vice of discrimination. Therefore, it is prayed that the impugned order be quashed and set aside.



4. Notice of motion to the State-respondent.
5. Ms. Saumya Ahluwalia, Sr. DAG, Haryana waives service of notice on behalf of the respondent-State.
6. Having heard the learned counsel for the petitioners and after perusing the record with his able assistance, this Court finds no force in the arguments advanced by the learned counsel for the petitioner.
7. At the outset, it would be pertinent to mention that the provision of Section 397 (2) of the Cr.P.C. imposes an express bar on the Courts to adjudicate interlocutory orders by exercising their revisional powers. With respect to invocation of revisional jurisdiction of the High Courts to challenge orders deciding applications moved under Section 311 Cr.P.C, it was conclusively held by the Hon'ble Supreme Court that the same is not maintainable. It was observed in ***Sethuraman vs. Rajamanickam: 2010(5) RCR (Criminal) 512*** that, "4. Secondly, what was not realized was that the order passed by the Trial Court refusing to call the documents and rejecting the application under Section 311 Cr.P.C, were interlocutory orders and as such, the revision against those orders was clearly barred under Section 397(2) Cr.P.C."
8. Even on merits, the petitioner has neither been able to put forth any cogent and convincing reasons nor has been able to point out any illegality in the impugned order that would warrant interference by this Court.
9. The Hon'ble Supreme Court, in ***V. N. Patil Vs. K. Niranjan***, reported in ***2021 (2) R.C.R. (Criminal) 310***, while examining the scope of Section 311 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."

10. Trite to say that though the Court is vested with the power to call witnesses at any stage in order to meet the ends of justice, 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, or be used as a tactic to delay the proceedings. The Court must make sure that the process itself does not end up becoming a punishment for the accused.

11. Reverting to the case at hand, a perusal of the impugned order would reveal that on 23.1.2025, the examinations-in-chief of PW-7 to PW-9 were recorded in the presence of Mr. Arvind Kumar Singla, Advocate, who was present in Court on the said date and full opportunity was granted to the accused and counsels representing them to cross-examine the said witnesses. However, the learned counsel for the accused sought an adjournment, which was declined by the learned trial Court and the cross-examination was treated as 'Nil. Opportunity given'. Furthermore, another argument was raised by the learned counsels appearing before the learned trial Court that the testimonies of PW-8 and PW-9 have been recorded without administering them oath. However, the said argument was rejected on the ground that it was due to typographic error, the words 'saith on oath' were not written on their testimonies. Resultantly, the learned trial Court concerned, has rightly exercised its power in dismissing the present



application as the said seems to be filed to delay the proceedings of the present case.

12. Moreover, mere change of counsel cannot be a ground to recall a witness and the application under Section 311 Cr.P.C must contain details as to why the witness is required to be recalled. Furthermore, the Court has to keep in mind not only the need for giving fair opportunity to the accused but also the need for ensuring that the victim of the crime is not unduly harassed. Therefore, there is no patent error in the approach adopted by the learned trial Court while rejecting the application for recalling the witnesses concerned.

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 the arguments advanced and evidence produced before it. The same being speaking, well reasoned and based upon correct appreciation of facts 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

August 04, 2025
Gurpreet Singh

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