

2025:PHHC:105718



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

104

CRR-1956-2025 (O&M)

Order Reserved on: 12.08.2025

Date of Pronouncement: 13.08.2025

SAHIL

... Petitioner

VERSUS

STATE OF HARYANA AND ANOTHER

... Respondents

CORAM: HON'BLE MS. JUSTICE SHALINI SINGH NAGPAL

Present: Mr. Bipin Ghai, Sr. Advocate with
Mr. Nikhil Ghai, Advocate for the petitioner.
Mr. Vishal Kashyap, Sr. DAG, Haryana.

SHALINI SINGH NAGPAL, J.

This is a revision petition challenging order dated 08.07.2025 of learned Additional Sessions Judge, Rewari vide which the application under Section 311 of the Cr.P.C., moved by the petitioner, was dismissed.

The facts relevant for decision of the petition are that a criminal case vide FIR No.231 dated 14.07.2022 under Sections 363, 366-A, 376 of Indian Penal Code and Section 4 of Prevention of Children from Sexual Offences Act, 2012 was registered at Police Station Bawal, District Rewari on complaint of mother of the victim, who reported that on 14.07.2022 at about 08.00 A.M., her daughter, the victim, student of 10th Class in Government Senior Secondary School, Khandoda went to school. When she (the complainant) returned home from the fields at about 10.00 AM, she found her mobile phone and Rs.10,000/- missing. She called her daughter on her mobile number, but the same was switched off, whereafter, she called her school

teacher, who informed that the victim did not come to school that day. She could not trace out her daughter. She suspected that her daughter used to talk on mobile number XXXXXX5491 from her father's mobile number XXXXXX1834. She prayed that the matter be investigated.

The police investigated the matter and filed report under Section 173 of the Cr.P.C. After framing of charges, prosecution examined witnesses. The victim was examined as PW10, her mother (the complainant) as PW11 and her father as PW12 on 28.09.2023. In her deposition, the victim stated that her date of birth was 19.12.2004. On the same lines were the depositions of PW11 and PW12 i.e. her mother and father.

An application under Section 311 Cr.P.C. for recalling PW10 to PW12 was moved by the petitioner in the trial Court claiming that due to typographical error, date of birth of the victim was typed as 19.12.2004, whereas the witnesses had stated that the victim was born on 19.02.2004. In the header of deposition sheet of the victim also, her age was mentioned as 19½ years.

The application was opposed by the State.

The learned Trial Court, vide impugned order dated 08.07.2025, dismissed the application under Section 311 Cr.P.C. observing that there was no typographical mistake in recording the date of birth of the victim and throughout during investigation, she had been disclosing her age as 17 years. Learned trial Court held that recalling of witnesses was not required as no justification or clarification was required in this regard.

Learned counsel for the petitioner argued that a compromise had been arrived at between the petitioner and the victim. The petitioner, who was

in relationship with the victim, wanted to marry her and for that reason only, the victim and her parents did not support prosecution's case. However, date of birth of the victim was wrongly typed as 19.12.2004, though infact, it was 19.02.2004 and the mistake was borne out from age of victim recorded in the header of the deposition sheet i.e. 19½ years.

In ***Rajaram Prasad Yadav Versus State of Bihar*** reported as **(2013) 14 SCC 461**, Hon'ble the Supreme Court laid down guiding principles to be kept in focus while dealing with application under 311 Cr.P.C. It was observed as under:-

“23. From a conspectus consideration of the above decisions, while dealing with an application under Section 311 Cr.P.C. read along with Section 138 of the Evidence Act, we feel the following principles will have to be borne in mind by the Courts:

- a) Whether the Court is right in thinking that the new evidence is needed by it? Whether the evidence sought to be led in under Section 311 is noted by the Court for a just decision of a case?*
- b) The exercise of the widest discretionary power under Section 311 Cr.P.C. should ensure that the judgment should not be rendered on inchoate, inconclusive speculative presentation of facts, as thereby the ends of justice would be defeated.*
- c) If evidence of any witness appears to the Court to be essential to the just decision of the case, it is the power of the Court to summon and examine or recall and re-examine any such person.*
- d) The exercise of power under Section 311 Cr.P.C. should be resorted to only with the object of finding out the truth or*

obtaining proper proof for such facts, which will lead to a just and correct decision of the case.

- e) The exercise of the said power cannot be dubbed as filling in a lacuna in a prosecution case, unless the facts and circumstances of the case make it apparent that the exercise of power by the Court would result in causing serious prejudice to the accused, resulting in miscarriage of justice.*
- f) The wide discretionary power should be exercised judiciously and not arbitrarily.*
- g) The Court must satisfy itself that it was in every respect essential to examine such a witness or to recall him for further examination in order to arrive at a just decision of the case.*
- h) The object of Section 311 Cr.P.C. simultaneously imposes a duty on the Court to determine the truth and to render a just decision.*
- i) The Court arrives at the conclusion that additional evidence is necessary, not because it would be impossible to pronounce the judgment without it, but because there would be a failure of justice without such evidence being considered.*
- j) Exigency of the situation, fair play and good sense should be the safeguard, while exercising the discretion. The Court should bear in mind that no party in a trial can be foreclosed from correcting errors and that if proper evidence was not adduced or a relevant material was not brought on record due to any inadvertence, the Court should be magnanimous in permitting such mistakes to be rectified.*
- k) The Court should be conscious of the position that after all the trial is basically for the prisoners and the Court should*

afford an opportunity to them in the fairest manner possible. In that parity of reasoning, it would be safe to err in favour of the accused getting an opportunity rather than protecting the prosecution against possible prejudice at the cost of the accused. The Court should bear in mind that improper or capricious exercise of such a discretionary power, may lead to undesirable results.

- l) The additional evidence must not be received as a disguise or to change the nature of the case against any of the party.*
- m) The power must be exercised keeping in mind that the evidence that is likely to be tendered, would be germane to the issue involved and also ensure that an opportunity of rebuttal is given to the other party.*
- n) The power under Section 311 Cr.P.C. must therefore, be invoked by the Court only in order to meet the ends of justice for strong and valid reasons and the same must be exercised with care, caution and circumspection. The Court should bear in mind that fair trial entails the interest of the accused, the victim and the society and, therefore, the grant of fair and proper opportunities to the persons concerned, must be ensured being a constitutional goal, as well as a human right.”*

The scope of an application under Section 311 Cr.P.C. for recalling the witnesses has also been discussed by Hon’ble Apex Court in ***State (NCT of Delhi) Versus Shiv Kumar Yadav and another*** reported as ***(2016) 2 SCC 402***.

The operative part of the judgment reads thus:

“27. Certainly recall could be permitted if essential for the just decision but not on such consideration as has been adopted in the present case. Mere observation that recall was necessary "for ensuring fair trial" is not enough unless there are tangible reasons

to show how the fair trial suffered without recall. Recall is not a matter of course and the discretion given to the court has to be exercised judiciously to prevent failure of justice and not arbitrarily. While the party is even permitted to correct its bonafide error and may be entitled to further opportunity even when such opportunity may be sought without any fault on the part of the opposite party, plea for recall for advancing justice has to be bonafide and has to be balanced carefully with the other relevant considerations including uncalled for hardship to the witnesses and uncalled for delay in the trial Having regard to these considerations, we do not find any ground to justify the recall of witnesses already examined.”

Section 311 of Cr.P.C., no doubt, empowers the Court to recall any witness already examined if his/her evidence appears to it to be essential for the just decision of the case. The present case, however, does not call for exercise of discretion under this provision.

After going through the depositions of PW10 to PW12, recorded before the trial Court on 28.09.2023, it does not appear that the date of birth of the victim has been typed as 19.12.2004 on account of typographical error. An error, if at all, may occur once, but it cannot readily be accepted that typographical error occurred in all three statements, that of the victim and her parents. No doubt, in the header of the deposition sheet of the victim (PW10), her age is recorded as 19½ years, but that itself is not sufficient to establish that the date 19.12.2004 was incorrectly typed in all three statements due to an error.

The learned trial Court on the basis of report under Section 173 Cr.P.C. has aptly observed in the impugned order that in school record of the victim, her date of birth was recorded as 09.12.2005. In her statement, she

disclosed her age as 17 years. At the time of medical examination also, she disclosed her age to be 17 years. Even her mother stated that her daughter (victim) was 17 years old. Before the Magistrate as well, the victim stated that she was 17 years old. Further, in the statement recorded by the Legal Aid Counsel, the age of the victim was recorded as 17 years. In cross-examination, her father (PW-12) conceded that in Ex.P2/PW1, the date of birth of his daughter has been recorded as 09.12.2005. It appears that on account of some settlement with the petitioner, the victim and her parents were in denial of the date of birth and came up with an imaginary date of birth i.e. 19.02.2004 without realizing that even then, the victim would be a minor at the time of the incident. The mistake appears to have been realized by them after the dismissal of third bail application by the learned Addl. Sessions Judge, Rewari, wherein a finding was recorded that the victim was a minor on the date of incident.

It follows that the application under Section 311 Cr.P.C. moved by the petitioner before learned trial Court was an afterthought and was not filed bonafide. The application was merely an endeavour to wipe out the statements on oath of PW10 to PW12 (the victim and her parents) regarding date of birth of the victim. Age of the victim is one of the most salient and crucial aspects to be determined by the trial Court while deciding the matter under Prevention of Children from Sexual Offences Act, 2012. As conceded by learned counsel for the revisionist, the very foundation of the application is a compromise arrived at between the parties. Such a course cannot be given seal of approval by the Court in matters of sexual abuse of children and cases involving the provisions of Prevention of Children from Sexual Offences Act, 2012. Recall of the witnesses is not required for just decision of the case.

No ground is made out to interfere with the impugned order dated 08.07.2025 passed by the Addl. Sessions Judge, Rewari vide which the application under Section 311 of the Cr.P.C., moved by the petitioner, was dismissed.

The revision petition is dismissed.

All other misc. application(s), if any, also stand(s) disposed of accordingly.

(SHALINI SINGH NAGPAL)
JUDGE

AUGUST 13, 2025.

Rajender

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No