

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

123

CRM-M-8576 of 2022

Date of decision:28.02.2022

Tarif Hussain

... Petitioner

Vs.

State of Haryana and another

... Respondents

CORAM: HON'BLE MR. JUSTICE Suvir Sehgal

Present:- Mr. Vinay Kumar Pandey, Advocate
for the petitioner.

Ms. Mahima Yashpal, DAG, Haryana.

SUVIR SEHGAL J.

Challenge in the instant petition filed under Section 482 of the Code of Criminal Procedure, 1973 (for short “the Code”) is to the order dated 17.02.2022 (Annexure P-7) passed by the learned Additional Sessions Judge, Fast Track Special Court for trial of offence under POCSO Act, Nuh, whereby, an application (Annexure P-6) filed under Section 311 of the Code, for recalling the victim for her cross-examination, has been dismissed.

Succinctly speaking, FIR No.177 dated 14.11.2019 has been registered for offences under Section 4 of Protection of Children from Sexual Offences Act, 2012 (for short “the POCSO Act”) and Section 506 of Indian Penal Code, 1860, in the alternative Section 376 IPC, at Women Police Station, Nuh (Annexure P-1) on the complaint of father of 12 years old victim on the allegation that in the noon, on 01.11.2019, his daughter

had gone to buy shampoo from a nearby shop. She met Tarif (present petitioner), on the way who took her to his house on some pretence where he forced her into a room and raped her. On reaching back home, the victim confided in her mother, who informed the complainant, who was out of station on his duty as he was working as a driver. On 12.11.2019, when the complainant came back home, he confronted the father of Tarif, who fought with him and the complaint was consequently lodged with the police. On conclusion of the investigation, a final report was presented and the petitioner was charged for the offences mentioned above. At the stage of recording of the statement of the accused, under Section 313 of the Code, an application dated 14.02.2020 (Annexure P-6) has been moved on behalf of the accused for recalling PW2-victim for further cross-examination, in view of the statement of her father PW5. After contest, application has been dismissed, vide order impugned herein.

Counsel for the petitioner has argued that as new facts have come to light in the testimony of the complainant, the child victim deserves to be recalled for cross-examination.

State counsel, who has been served with an advance copy of the petition, has opposed the prayer and while supporting the impugned order, has submitted that the application has been filed simply to delay the proceedings.

I have heard counsel for the parties and perused the impugned order as well as the documents annexed with the petition.

After examining the provisions of Section 311 of the Code, Hon'ble Supreme Court in **Swapan Kumar Chatterjee Vs. Central Bureau of Investigation (2019) 14 SCC 328** has held as under:-

*“10. The first part of this Section which is permissive gives purely discretionary authority to the criminal court and enables it at any stage of inquiry, trial or other proceedings under **the Code** to act in one of the three ways, namely, (i) to summon any person as a witness; or (ii) to examine any person in attendance, though not summoned as a witness; or (iii) to recall and re-examine any person already examined. The second part, which is mandatory, imposes an obligation on the court (i) to summon and examine or (ii) to recall and re-examine any such person if his evidence appears to be essential to the just decision of the case.*

*11. It is well settled that the power conferred under **Section 311** should be invoked by the court only to meet the ends of justice. The power is to be exercised only for strong and valid reasons and it should be exercised with great caution and circumspection. The Court has wide power under this Section to even recall witnesses for reexamination or further examination, necessary in the interest of justice, but the same has to be exercised after taking into consideration the facts and circumstances of each case. The power under this provision shall not be exercised if the Court is of the view that the*

application has been filed as an abuse of the process of law.”

When examined in the light of the clear enunciation of law by the Apex Court, this Court has no hesitation in coming to the conclusion that the present petition deserves to be dismissed. A perusal of the two paragraph application (Annexure P-6) submitted by the accused-petitioner shows that recall of the minor victim has been sought on the premise that many new facts have come forth in the deposition of complainant-father of the victim, with which she is to be confronted. It has not been spelled out in the application as to what are the facts which need to be clarified with the victim. On a specific query by the Court, counsel for the petitioner submitted that the complainant has admitted in his cross-examination that he owed a debt of Rs.12,000/- to the accused-petitioner for purchase of grocery items from his shop and the victim needs to be questioned on this. However, a perusal of the detailed cross-examination of the victim shows that victim has already been questioned on this aspect and in very categoric terms, she has stated that “it is incorrect that we purchased grocery worth Rs.12,000/- from the shop of Tarif in the past and when he started asking the money back, a dispute arose between us and it was tutored by me (my) parents to depose falsely against him.” Still further, it deserves to be noticed that the victim was examined before the Trial Court on 19.03.2021 (Annexure P-3) which was followed by an extensive cross-examination, which she withheld and has been consistent in her deposition. On the contrary, her father-complainant, PW-5 in his testimony did not support the case of the prosecution and has been declared hostile in October, 2021. The

application for recall has been submitted in February, 2022, after five more prosecution witnesses have been examined and the prosecution evidence has been closed. It was at the stage of the statement of the accused under Section 313 of the Code, when the present application has been filed. No reason has been assigned by the accused to explain the delay in filing of the application. In this view of the matter, the Court is of the opinion that prayer to recall the victim under Section 311 of the Code is *malafide* and her re-examination is not necessary for the just decision of the case. There is no illegality or irregularity in the impugned order passed by the Trial Court.

Finding no merit in the petition, it is ordered to be dismissed.

It is clarified that nothing said hereinabove shall be construed to be an expression on the merits of the case and the Trial Court shall proceed to conclude the trial uninfluenced by any observation made hereinabove.

**(SUVIR SEHGAL)
JUDGE**

February 28, 2022
savita

<i>Whether Speaking/Reasoned</i>	<i>Yes</i>
<i>Whether Reportable</i>	<i>Yes</i>