

2025:PHHC:043236



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

**CRM M-22513 of 2022**

**Date of Decision: 17.03.2025**

Tilak Raj ...Petitioner  
Versus  
State of Haryana ... Respondent

**CORAM : HON'BLE MR. JUSTICE N.S.SHEKHAWAT**

Present : Mr. Bikramjit Arora, Advocate, for the petitioner.

Mr. Rajinder Kumar Banku, DAG, Haryana.

**N.S.SHEKHAWAT, J. (Oral)**

1. The petitioner has filed the present petition under Section 482 of the Cr.P.C. with a prayer to quash the impugned order dated 02.04.2022 (Annexure P-8) passed by the Court of Sh. Sanjay Sandhir, Additional Sessions Judge, Ambala, whereby, the application under Section 311 Cr.P.C. filed by the petitioner for recalling the prosecutrix for further cross-examination, was ordered to be dismissed.

2. Learned counsel for the petitioner contends that initially the FIR No. 66 dated 23.04.2019 under Section 363/366 IPC was registered at Police Station Barara, District Amabala, on the basis of statement made by Rai Sahab, father of the prosecutrix against the present petitioner. It was alleged that at about 20/25 days ago, his

daughter Aarti had gone to the house of her maternal aunt, however, without disclosing anything to anyone, she left the house on 23<sup>rd</sup> April 2019. The complainant expressed full suspicion that the petitioner and Salman son of Baruram had enticed away his daughter. After the girl was recovered, the matter was investigated and a report under Section 173 Cr.P.C. was presented against the petitioner and others. He further contends that in fact from the MLR of the prosecutrix dated 26.04.2019, it was apparent that the hymen had already ruptured and there was no fresh injury on the person of Aarti. During the course of trial, the prosecutrix appeared as a prosecution witness on 05<sup>th</sup> March, 2020 and was examined by the defence counsel. However, the DNA report was received on 30.06.2021 from FSL, Madhuban, Karnal and as per the said report, DNA profile obtained from the clothes of the prosecutrix for matching with the DNA profile of the accused. Thus, an application was moved by the petitioner under Section 311 Cr.P.C. for recalling the prosecutrix for further cross-examination, on account of filing of the DNA report.

3. Learned counsel for the petitioner vehemently contends that the trial Court had completely overlooked the object and purpose of Section 311 Cr.P.C., while passing the impugned order. In fact, the fair trial is the main object of criminal procedure and the trial Court was bound to ensure that such fairness is not hampered or threatened in any manner. The fair trial entails the interest of the accused, victim and the society and fair trial also includes the grant of fair and proper

opportunities to cross-examine the witnesses, which is also a constitutional as well as a human right. He further contends that since the DNA report was not earlier available on the record, when the prosecutrix was examined, it was essential to cross-examine the prosecutrix regarding the DNA report and the impugned order is unsustainable.

4. I have heard the learned counsel for the petitioner and perused the record carefully.

5. Before proceeding any further, it would be appropriate to reproduce Section 311 Cr.P.C., which provides for powers of the Court to summon the material witnesses or examine any person and the same has been reproduced below:-

***“311. Power to summon material witness, or examine person present.***

*- Any Court may, at any stage of any inquiry, trial or other proceeding under this Code, summon any person in attendance, though not summoned as a witness, or recall and re-examine any person already examined; and the Court shall summon and examine or recall and re-examine any such person if his evidence appears to it to be essential to the just decision of the case”.*

6. Now advertent to the facts of the present case, it is apparent that the prosecutrix Aarti appeared as PW6 and from her testimony (Annexure P-4), it is apparent that she had already been examined on every aspect at a great length by the defence counsel.

Even, this Court fails to understand as to how the receipt of a DNA report could serve as fresh ground for recalling the prosecutrix for further cross-examination. In fact, the DNA report has been rendered by the Forensic Science Laboratory, Madhuban, regarding the analysis of DNA profile and as per the said report, the DNA profile obtained from the underwear and salwar of the prosecutrix was matching with DNA profile of Tilak Raj, petitioner. Even, the prosecutrix has already been examined in detail by the defence counsel and all the material questions had been put to her. Thus, the trial Court has correctly appreciated the facts of the present case in the light of the provisions contained under Section 311 Cr.P.C. and the present application under Section 311 Cr.P.C. seems to be only a dilatory tactic on the part of the accused. Now at this stage, the accused cannot be allowed to introduce a new version altogether, by recalling a witness by taking recourse to the provisions of Section 311 Cr.P.C. Thus, the impugned order dated 02.04.2022 (Annexure P-8) passed by the Additional Sessions Judge, Ambala, is upheld and the present petition is ordered to be dismissed.

**17.03.2025**

amit rana

**(N.S.SHEKHAWAT)****JUDGE**

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