



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

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CRM-M-4121-2025

Date of decision : 17.03.2025

Pankaj

....Petitioner

V/S

State of Haryana and another

....Respondents

CORAM : HON'BLE MR. JUSTICE NAMIT KUMAR

Present: Ms. Devanshi Sharma, Advocate for
Mr. Sushil Bhardwaj, Advocate for the petitioner.

Ms. Gaganpreet Kaur, D.A.G., Haryana.

NAMIT KUMAR, J. (ORAL)

1. The petitioner has filed the instant petition under Section 528 of Bharatiya Nagarik Suraksha Sanhita, 2023 for setting aside the order dated 08.01.2025 (Annexure P-6) passed by learned Additional Sessions Judge, Gurugram, whereby an application filed by the petitioner under Section 311 of Cr.P.C. for recalling of PW4-complainant for cross-examination in FIR No.354 dated 28.10.2020 registered under Section 6 of Protection of Children from Sexual Offences Act, 2012 and Sections 363 & 366-A of Indian Penal Code, 1860 at Police Station Rajendra Park, Gurugram, has been dismissed.

2. Learned counsel for the petitioner submits that since the earlier counsel did not cross-examine the PW4-complainant (father of the victim), therefore, a new counsel was engaged and an application under Section 311 of Cr.P.C. for recalling of PW4-complainant for



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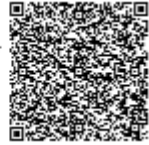
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cross-examination was filed which has been rejected vide impugned order dated 08.01.2025 passed by learned Additional Sessions Judge, Gurugram.

3. On receipt of advance notice, learned State counsel has put in appearance and opposed the prayer made in the present petition by stating that sufficient opportunities were granted to the petitioner to cross-examine PW4-complainant and the impugned order is perfectly legal and valid.

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

5. Perusal of zimini orders shows that on 08.08.2023, statement of father of the victim was recorded as PW4 and his cross-examination was deferred on the request made by proxy counsel of the petitioner as the arguing counsel was not available and the case was adjourned for 22.08.2023 subject to payment of cost of Rs.1,000/-. On 22.08.2023, the matter was adjourned for 26.09.2023 as no prosecution evidence was present. On 26.09.2023, since the petitioner was not present, therefore, warrant of arrest against him was issued for 18.11.2023. On 18.11.2023, case was called several times, however, no one was present on behalf of the petitioner and S.H.O. concerned was directed to take charge of Child-in-Conflict with Law (the petitioner) and be produced before the Court on 12.12.2023. On 12.12.2023, fresh power of attorney on behalf of the petitioner was filed and the petitioner was produced before the Court and in the post lunch session, the application filed by the petitioner for grant of regular bail was allowed

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and he was ordered to be released on regular bail on furnishing bail bonds in a sum of Rs.50,000/- and the case was adjourned to 15.01.2024. On 15.01.2024, testimony of one PW Constable Rahul was recorded as PW5 and since the complainant and victim could not appear before the Court despiteailable warrant of arrest served upon them, therefore, their presence was ordered to be secured by issuing warrant of arrest for 13.02.2024. On 13.02.2024, PW4-complainant appeared before the Court but could not be examined on the request of learned defence counsel and the case was adjourned for 05.03.2024. On 05.03.2024, PW4-complainant appeared before the Court but again could not be examined on the request of learned defence counsel and the case was adjourned for 19.04.2024. On 19.04.2024, PW4-complainant was present but could not be examined as the petitioner did not appear before the Court and the case was adjourned for 23.05.2024. On 23.05.2024, the petitioner was produced before the Court by the S.H.O. concerned and on a regular bail application moved on behalf of the petitioner, the same was allowed and he was released from protective custody and the case was adjourned for 12.07.2024. On 12.07.2024, PW4-complainant was present but could not be examined on the request of learned defence counsel and the case was adjourned for 07.08.2024. On 07.08.2024, PW4-complainant was present but learned defence counsel did not turn up in the Court, hence, the cross-examination could not be conducted and the same was treated as nil. However, there is no gain saying that the PW-complainant has been examined and enough opportunities have been given to the petitioner/accused for cross-

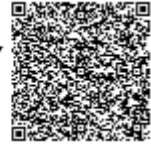


examining the PW-4 complainant. It is settled proposition of law that statutory provisions of Section 311 Cr.P.C. are liberal in nature, however, neither the discretion under Section 311 Cr.P.C. can be exercised to delay the trial nor to fill up the lacunas in the case. Reliance is placed on ***V.N. Patil Vs. K. Niranjana Kumar and others, passed in SLP(Crl.)No.8965 of 2018 on 04.03.2021***, relevant para of which reads thus:

“15. The 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 the 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 any inquiry or trial or other proceeding under this Code”. It is, however, to be borne in mind that the discretionary power conferred under Section 311 Cr.P.C. has to be exercised judiciously, as it is always said “wider the power, greater is the necessity of caution while exercise of judicious discretion.”

6. To the same effect is the judgment of the Hon'ble Supreme Court in the case of ***AG Vs. Shiv Kumar Yadav and another : 2015(4) R.C.R.(Criminal) 312***, wherein the Hon'ble Supreme Court after discussing various judgments has held that mere change of counsel cannot be a ground to recall the witness. In the said judgment it was held as under: -

“10. It can hardly be gainsaid that fair trial is a part of guarantee under Article 21 of the Constitution of India. Its



content has primarily to be determined from the statutory provisions for conduct of trial, though in some matters where statutory provisions may be silent, the court may evolve a principle of law to meet a situation which has not been provided for. It is also true that principle of fair trial has to be kept in mind for interpreting the statutory provisions.

11. It is further well settled that fairness of trial has to be seen not only from the point of view of the accused, but also from the point of view of the victim and the society. In the name of fair trial, the system cannot be held to ransom. The accused is entitled to be represented by a counsel of his choice, to be provided all relevant documents, to cross-examine the prosecution witnesses and to lead evidence in his defence. The object of provision for recall is to reserve the power with the court to prevent any injustice in the conduct of the trial at any stage. The power available with the court to prevent injustice has to be exercised only if the Court, for valid reasons, feels that injustice is caused to a party. Such a finding, with reasons, must be specifically recorded by the court before the power is exercised. It is not possible to lay down precise situations when such power can be exercised. The Legislature in its wisdom has left the power undefined. Thus, the scope of the power has to be considered from case to case. The guidance for the purpose is available in several decisions relied upon by the parties. It will be sufficient to refer to only some of the decisions for the principles laid down which are relevant for this case.”

6. Since sufficient opportunities were granted to the petitioner for cross-examination of PW4-complainant (father of the victim) and mere change of counsel is no ground to recall the witness, therefore, I

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do not find anything wrong in the impugned order dated 08.01.2025 passed by learned Additional Sessions Judge, Gurguram. Consequently, the present petition is dismissed.

17.03.2025*kothiyal***(NAMIT KUMAR)
JUDGE**

Whether speaking/reasoned:

Yes/No

Whether Reportable:

Yes/No