



CRM-M-15129-2024

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IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH

CRM-M-15129-2024

Date of Decision:- 21.08.2025

Nitesh @ Nitesh Kumar

...Petitioner

Versus

State of Haryana and another

...Respondents

**CORAM:- HON'BLE MRS. JUSTICE AMARJOT BHATTI**Present:- Mr. Baljeet Beniwal, Advocate  
for the petitioner.

Mr. Ayuwan Singh, AAG, Haryana.

Mr. Gaurav Sharma, Advocate  
for respondent No. 2.

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**AMARJOT BHATTI, J. (Oral)**

1. Petitioner Nitesh @ Nitesh Kumar has filed petition under Section 482 of Cr.P.C. for setting aside impugned order dated 27.02.2024 (Annexure P/4) passed by learned Additional Sessions Judge, Faridabad, whereby application under Section 311 Cr.P.C. for recalling respondent No. 2/prosecutrix PW-9 for re-examination has been allowed in FIR No. 122 dated 06.08.2019 under Section 323, 376(2)(n), 506 of IPC registered at Women Police Station Ballabhgarh, District Faridabad.
2. Facts of the case are prosecutrix 'TM' filed written complaint against accused Nitesh Dahiya with allegations of sexually exploiting her



for the last one and a half years on the pretext of marriage. When she asked him to perform marriage, he abused her and threatened to kill her. He further threatened to kill her father. Complainant alleged that accused had borrowed money with her help to the tune of Rs. 4 lacs from her friend Takshay Chaudhary. Prosecutrix stated that accused Nitesh had committed forcible rape with her in Ciaz car bearing Registration No. HR 29 AQ 0385 on bypass road, Ballabgarh. At that time he had given assurance to marry her. He used to beat her in case she did not obey his commands. He extracted money from her several times. He used to compel her to spend money on shopping for him and in this way he had already managed to take Rs. 12 lacs from her. With these allegations present FIR has been registered.

3. Learned counsel for petitioner argued that allegations levelled against petitioner are false. During the course of trial, statement of prosecutrix was recorded on oath on 20.01.2020 (Annexure P/2), where she did not support prosecution case and thereafter with permission of Court she was cross-examined by learned Public Prosecutor representing State. During the pendency of trial, application was filed under Section 311 Cr.P.C. which was dismissed as withdrawn as per order dated 16.08.2021 (Annexure P/3). Subsequently, again another application was filed under Section 311 Cr.P.C. for recalling of prosecutrix PW-9 for re-examination, which is allowed by passing impugned order dated 27.02.2024 (Annexure P/4). It is pointed out that application filed by prosecution after a lapse of 02 years 08 months is not justified. First application under Section 311



Cr.P.C. was withdrawn, therefore, prosecution was not justified in filing second application under Section 311 Cr.P.C. Prosecutrix has changed her stand time and again and is filing application under Section 311 Cr.P.C. one after the another. Prosecution cannot be permitted to fill up the lacunas in the case. Therefore, impugned order dated 27.02.2024 (Annexure P/4) may kindly be set aside by accepting present petition.

4. On the other hand, learned counsel representing respondent No. 2 assisting learned counsel representing State of Haryana pointed out that all the facts and circumstances of case were duly considered by learned Additional Sessions Judge, Faridabad at the time of passing impugned order dated 27.02.2024. Infact, it is petitioner who played mischief with prosecutrix/respondent No. 2. During the pendency of trial, petitioner again made false promise to marry her. Once her testimony was recorded as PW-9 (Annexure P-2), he conveniently backed out from the said promise. He and his family refused to abide by terms of performing marriage with prosecutrix. Therefore, by considering all the facts and circumstances of case, learned Additional Sessions Judge, Faridabad allowed application under Section 311 Cr.P.C. by passing impugned order dated 27.02.2024 (Annexure P/4). Present petition has been filed only to delay the trial.

5. I have considered the arguments advanced before me. Admittedly, learned Additional Sessions Judge, Faridabad has allowed second application filed by prosecution under Section 311 of Cr.P.C. by passing impugned order dated 27.02.2024 (Annexure P/4). In order to appreciate the facts and circumstances of case, it is appropriate to consider



the provisions of Section 311 Cr.P.C., which runs as under :-

**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.”

As per aforesaid provision, any Court at any stage of inquiry, trial or other proceedings is empowered to summon any person as a witness or recall and re-examine any person already examined for just decision of case. As per facts narrated in FIR, prosecutrix levelled allegations against petitioner for sexual exploitation for years together on the pretext of marriage and there are allegations that he also extorted money from her. After investigation of case, challan was presented in the Court, present petitioner was charge-sheeted and trial in aforesaid FIR started. During the pendency of trial, statement of prosecutrix was recorded as PW-9 (Annexure P/2), where she claimed that one day he gave her beatings and out of fear she lodged complaint and further stated that he did not commit rape upon her at any point of time. Prosecutrix was cross-examined with permission of Court by learned Public Prosecutor representing State. Thereafter, application was filed under Section 311 Cr.P.C. where prosecutrix explained that during the trial due to false promise of marriage and due to family pressure as well as of society, she had given aforesaid statement in the Court, but later on petitioner/accused and his family



members refused to abide by said promise of marriage, as a result she filed application under Section 311 Cr.P.C. for recalling prosecutrix for re-examination. As per version mentioned in application under Section 311 Cr.P.C., it shows that prosecutrix was influenced during the pendency of trial and for this reason she had given statement as PW-9 (Annexure P/2). Contents of FIR further indicate that prosecutrix was allegedly sexually exploited on false promise of marriage. As per version of respondent No. 2/prosecutrix, once her statement was recorded as PW-9, petitioner/accused and his family backed out from said promise of marriage. By re-examination of prosecutrix as PW-9, trial Court will be in a position to find out the truth. Neither prosecutrix nor petitioner/accused are permitted to manipulate the judicial process. Present petitioner will not suffer any prejudice on the re-examination of prosecutrix as PW-9, as he will get full opportunity to cross-examine the witness.

Considering the aforesaid facts and circumstances of case, learned trial Court has not committed any illegality or error by allowing application for re-examination of prosecutrix under Section 311 Cr.P.C. by passing impugned order dated 27.02.2024 (Annexure P/4) and same is, accordingly, upheld and consequently, present petition filed by petitioner, is accordingly, dismissed.

21.08.2025

*lalit***(AMARJOT BHATTI)  
JUDGE**

Whether speaking/reasoned:

Yes/No

Whether reportable:

Yes/No