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

Sr. No.281

**CRM-M-58112-2024 (O&M)
Date of decision : 29.01.2025**

Parvinder Singh

..... Petitioner

VERSUS

State of Punjab and others

..... Respondents

CORAM: HON'BLE MS. JUSTICE KIRTI SINGH

Present: Mr. K.K. Gupta, Advocate for the petitioner.

Ms. Aakanksha Gupta, AAG, Punjab.

KIRTI SINGH, J. (Oral)

1. The instant petition has been filed under Section 528 of BNSS, 2023 for quashing of the order dated 01.10.2024 (Annexure P10) passed by the learned Addl. Sessions Judge, Fast Track Special Court, SAS Nagar in the case titled as 'State Vs. Nimmo Kaur and others' bearing CIS No.SC/122/2020 in pursuance to FIR No.78 dated 22.08.2020, registered at Police Station City Kurali, under Sections 376, 506 & 120-B read with Section 6 of POCSO Act, 2012 and Section 67-B of IT Act.

2. The facts in brief are that the abovesaid FIR was registered against accused Nimmo Kaur and one unknown person on the basis of statement suffered by the complainant alleging that her minor daughter, aged 14 years, informed her on 22.08.2020 that on 18.06.2020 her aunt (chachi) Nimmo Kaur had called her friend to their house at around 12.30 A.M the night. She gave a drink laced with some intoxicant to her and after drinking the same, she became unconscious and when she woke up after a while, she saw her clothes smeared with blood. When she asked her aunt (Nimmo)

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about the same, she told her that she has prepared her video and that in case, the victim discloses the occurrence to anyone, then she would kill her. Thereafter her aunt-Nimmo by threatening her, took her to different hotels in Kharar/Mohali and got her physically assaulted/molested from the same person on various occasions against her wishes. Because of this, the victim was frightened. Accordingly, legal action was sought against Nimmo Kaur and the aforesaid unknown person. Since, the perusal of the aforesaid statement *prima facie* revealed the commission of offences under Section 376, 506 & 120B IPC and Section 6 POCSO Act and therefore, abovestated FIR was registered and investigation commenced.

3. Learned counsel for the petitioner *inter alia* submits that the learned Special Court, SAS Nagar has erred while allowing the application under Section 311 Cr.P.C. has failed to notice that earlier also, similar application under Section 311 Cr.P.C. was filed for re-examination of the prosecutrix which was dismissed vide order dated 08.03.2021 (Annexure P6) by passing a detailed and reasoned order which was further sustained by this Court vide order dated 01.04.2024 (Annexure P7). Same was challenged before Hon'ble Supreme Court and was not interfered by Hon'ble Supreme Court while passing order (Annexure P8). He further submits that while disposing of the SLP, the Hon'ble Supreme Court vide its order dated 08.07.2024 (Annexure P8) had ordered that if the victim moves an application in an appropriate provision, seeking re-examination of herself, such an application can be considered by the Court concerned as per law. But the learned trial Court has failed to consider the same as per law as such fresh application was not maintainable, in view of the earlier orders passed

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by it and the findings given therein and the law relied upon is not sustainable in the eyes of law. It has further been argued that the learned trial Court has also failed to notice that the facts & circumstances of the case remained the same and therefore, there was no occasion for the learned trial Court to entertain and allow the application of the prosecutrix for her re-examination.

4. *Per contra*, the learned State counsel has opposed the present petition and while placing reliance upon the reply filed has vehemently argued that there are serious allegations leveled and there is no infirmity in the order that has been passed by the learned Family Court. It has also been stated that during the course of investigation, the spot of occurrence was inspected, site plan was prepared and the statements of the witnesses were recorded under Section 161 Cr.P.C. The prosecutrix was medically examined by the Medical Officer, Civil Hospital, Kharar on 22.08.2020 and vaginal swabs received from the doctor were sent for examination to the Forensic Science Laboratory. Further, the accused Nimmo Kaur was arrested in the present FIR on 22.08.2020. The statement of the victim under Section 164 Cr.P.C. was recorded on 23.08.2020 based on which Parvinder Singh-petitioner herein was nominated as accused in the present case. Thereafter, raid was conducted at the house of the petitioner on 23.08.2020, however, he was not found present there. The petitioner was arrested in the present case on 28.08.2020 and he was subjected to medical examination, and his blood samples, DNA samples and penal swabs were sent for examination to Forensic Science Laboratory. Offence under Section 67-B IT Act was added into the array of sections on 29.08.2020. Accused Nimmo Kaur, during her interrogation at the time of police remand, suffered

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disclosure statement under Section 27 of the Indian Evidence Act and in pursuance to the same, she got recovered one mobile phone which was taken into police possession. The recovered mobile phone was sent for examination to Punjab Cyber Crime Cell, District SAS Nagar. She further submits that from the investigation conducted, the offences against the accused Nimmo Kaur and Parvinder Singh-petitioner stood duly corroborated and accordingly, the report under Section 173 Cr.P.C. was prepared on 20.09.2020 and presented before the Court on 05.10.2020. Taking cognizance of the offences, the learned Court framed charges against the accused vide order dated 08.01.2021 and all the prosecution witnesses stand examined. Further, the learned trial Court while dismissing the application under Section 311 Cr.P.C. filed earlier had observed that application was not signed by the prosecutrix or complainant and the same was also observed by this Court while passing order (Annexure P7). The Hon'ble Supreme Court while passing order (Annexure P8) had observed that in case, the prosecutrix moves any application seeking re-examination of herself then same shall be decided independent of orders impugned before it. Thus, the learned trial Court has rightly entertained the application and passed the impugned order.

5. Having heard the learned counsel for the parties and after perusing the record of the case with their able assistance, this Court is of the opinion that in the application dated 18.01.2021 it has been categorically stated that the victim was threatened by the younger brother of the accused petitioner herein due to which the victim and her mother resiled from their statements suffered earlier. It has also been observed by the trial Court that

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in the first application under Section 311 Cr.P.C. it was mentioned that on 18.01.2021, some men threatened the victim on behalf of the petitioner. However, in the complaint addressed to the SSP concerned, it was mentioned that on 28.01.2021, the petitioner threatened the victim when she was coming back from her tuition. No doubt, in the first application under Section 311 Cr.P.C., it was mentioned that on 18.01.2021, some men threatened the victim on behalf of the petitioner but in the complaint dated 31.01.2021 addressed to SSP, it was mentioned that on 28.01.2021, the petitioner threatened the victim, though the petitioner was in custody but the said complaint was not moved by the victim herself and was moved by Sunny Bajwa and Deepika Bajwa, who are relatives of victim and even if the relatives of the victim have given the complaint to the police and mentioned wrong facts therein, the rights of the victim should not be curtailed for their mistake which otherwise appears to be a bona fide mistake. In the application for recalling her for examination, the victim has specifically alleged that she was under threat and pressure and for same reason, she resiled from the statement suffered earlier. The power to recall the witness is neither to help the prosecution nor the defence. The prosecutrix who was 14/15 years old has stated that she was under threat and due to that reason on 19.01.2021, she resiled from her statement and she should not suffer due to the said reason especially when no prejudice is going to be caused to the accused as they will get an opportunity to cross examine her.

6. In the present circumstance, it is imperative to examine Section 348 BNS. The text of the said Section is provided below for reference:-

‘348. Power to summon material witness, or examine person present. Any Court may, at any stage of any inquiry,

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trial or other proceeding under this Code, summon any person as a witness, or examine 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 reexamine any such person if his evidence appears to it to be essential to the just decision of the case.’

7. A two Judge Bench of the Hon’ble Supreme Court in **V. N. Patil Vs. K. Niranjana, 2021 (2) R.C.R. (Criminal) 310**, examined the scope of the power under Section 311 of Cr.P.C and speaking through justice Ajay Rastogi, the following was observed:

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

8. The Hon’ble Supreme Court in **Mohanlal Shamji Soni Vs. Union of India and another, AIR 1991 SC 1346** has held that where the object of the accused in recalling witnesses already examined in the case is to prolong the trial of the case, the Court would not allow such application. Moreover, the power under Section 311 of Cr.P.C is dictated by exigency of the situation based on the principle of fair play and goodwill and existence of the evidence being essential for the just adjudication of the case is the only guiding factor and that only the ends of justice requires the examination of any person which would depend to the facts and circumstances of each case. It was further held that it is obligatory on the part of the court to

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summon the witness in case his evidence appears to be essential for just decision of the case. Such power may be exercised at any stage. However, the power is circumscribed by the principle underlying the section, that is, the evidence to be obtained must be essential for just decision of the case.

9. A Division Bench of this Court in ***Sukhdev Singh Vs. State of Punjab, 1982 Cr. LJ 2201*** has held as under:

“The discretion is required to be exercised by the Court keeping in view the just decision of the case unmindful of the fact whether any party before it gains or losses from the exercise of such discretion under this section. There is no doubt that object of the section is not to enable any one or the other party to fill up the gaps of its case. The section is not to be used to enable it to repair the lacuna. The sole criterion in such a case should be whether the exercise of power under section is necessary in the interest of justice. While exercising this discretion the court has to keep in its mind the well-known principle of law that the order should not operate as a rebuttal of the case set up by the defence after the prosecution case is closed. The use of this section cannot be limited only to something arising eximporviso which no human agency could see. The mere fact that evidence is permitted to be taken after the entire prosecution case is over is in itself in excess of the powers of the Court. No hard and fast rules can be prescribed as to when and at what stage this discretion should be exercised. The anxiety for justice is paramount and should be kept in view. The Court should be unmindful of the fact of the use of the discretion in favour or against any party. The principle that such evidence should not demolish the case set up by the accused in his defence, if he has done so should be present in the mind of the judge at the time when he takes a decision. The powers of the Court under Section 311 which are very wide cannot be limited. The discretion can be exercised by the Court at any stage of the case, but on justifiable grounds”. (emphasis added).”

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10. In view of the discussions made hereinabove and in the light of law settled by the Hon'ble Supreme Court in the cases referred to above, this Court does not find any infirmity in the order dated 01.10.2024 (Annexure P10) passed by the learned Addl. Sessions Judge, Fast Track Special Court, SAS Nagar and the present petition is dismissed.

Pending miscellaneous application(s), if any, also stands disposed of.

(KIRTI SINGH)
JUDGE

29.01.2025

Ramandeep Singh

Whether speaking / reasoned

Yes/No

Whether Reportable

Yes/No