



CRM-M-3075-2025(O&M)

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

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**CRM-M-3075-2025(O&M)
Date of decision: 22.07.2025**

MONI ALIAS RAKESH AND ANOTHER**....Petitioners**

Versus

STATE OF HARYANA AND ANOTHER**....Respondents****CORAM: HON'BLE MS. JUSTICE KIRTI SINGH**

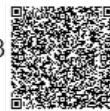
Present : Mr. Ashish Sharma, Advocate for
Mr. Rajesh Khandelwal, Advocate
for the petitioners.

Ms. Saumya Ahluwalia, Sr. DAG, Haryana.

KIRTI SINGH. J.

This is the petition under section Section 482 Cr.P.C.1973 praying for quashing of the impugned order dated 11.12.2024 passed under Section 311 of Cr.P.C., whereby the application for recall of the victim (PW7) and her mother (PW10) for further cross-examination has been dismissed in case FIR No.64 dated 21.10.2020, registered under Sections 376D, 363, 366A, 328, 420, 506, 201 of the IPC, Section 6 of the Protection of Children from Sexual Offences Act, and Section 67B of the Information Technology Act, at Women Police Station, Hansi, District Hisar.

2. Brief facts as culled out from the petition are that the present FIR was lodged on the basis of a complaint filed by the mother of the prosecutrix, alleging that about 40 days prior to the moving of the complaint, her minor daughter, aged about 15–16 years, was contacted by the accused-petitioners herein, claiming to possess a photograph of the prosecutrix. On this pretext, they lured her and took

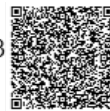


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her to an unknown location in a car. There, the petitioners allegedly offered the prosecutrix a cold drink laced with intoxicants, and sexually assaulted her while she was unconscious. The petitioners thereafter allegedly blackmailing the prosecutrix with her objectionable photos and videos, and threatened to kill her younger brother in case she did not comply with their illicit demands. Trial against the petitioners commenced, and the case was fixed for defence evidence, when the application under Section 311 Cr.P.C. was moved on behalf of the petitioners, which was dismissed by way of impugned order dated 11.12.2024. Aggrieved by the same, the petitioners have approached this Court.

3. Learned counsel for the petitioners *inter alia* submits that the petitioners moved an application under Section 311 Cr.P.C. on 13.11.2024, seeking further cross-examination of PW7 (the victim) and PW10 (her mother), since at the time of their earlier examination, learned counsel engaged by the petitioners was unable to have a detailed discussion with the petitioners regarding the facts in issue and was, therefore, not in a position to effectively cross-examine the said witnesses. It is submitted that there is material available on record to indicate that the prosecutrix was a major on the date of the alleged occurrence, and thus re-examination of PW-7 and PW-10 is necessary to bring the same on record. However, the learned trial Court, by dismissing the said application and ordering the closing of prosecution evidence, has greatly prejudiced the case of the petitioners, since the examination of the witnesses and the said records is vital for the fair adjudication of the case. Reliance in this regard is placed on the judgment passed by the Hon'ble Supreme Court in '*AG Vs. Shiv Kumar Yadav & Anr*' SLP(Crl) No.2215/2216 of 2015 decided on 10.09.2015. Hence, the impugned



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order may ordered to be set aside and the petitioners be given another opportunity to examine the witnesses.

4. Learned State counsel submits that the application moved under section 311 Cr.P.C. was dismissed after proper application of mind, by way of a detailed and well reasoned order, and after giving due consideration to the facts and circumstances of the case. Thus, the same may be upheld and the present petition be dismissed.

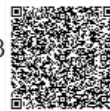
5. Having heard the learned counsel for the petitioners and after perusing the record with his able assistance, this Court finds no force in the arguments advanced by learned counsel for the petitioners. The present petition is decided *in limine* in order to save litigation cost of the respondent and also to save the judicial time of the Court.

6. Before adjudicating the matter, it would be apposite to refer to the provision under Section 311 Cr.P.C. which reads thus:

“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 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 re-examine any such person if his evidence appears to it to be essential to the just decision of the case.”

7. The Hon'ble Supreme Court, in **V. N. Patil Vs. K. Niranjan, 2021 (2) R.C.R. (Criminal) 310**, while examining the scope of Section 311 of Cr.P.C observed that:

“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. This principle has also been reiterated in ***Swapan Kumar Chatterjee v. Central Bureau of Investigation, 2019(14) SCC 328***, the relevant paras of which read thus:

"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 vide 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."

9. Reverting to the case at hand, a perusal of the case file reveals that the examination-in-chief of the victim (PW7) was recorded on 01.08.2023, while her cross-examination was conducted on 11.12.2023. Similarly, the examination-in-chief of her mother (PW10) was recorded on 11.12.2023, and her cross-examination was conducted on 19.12.2023. At the relevant time, thorough and lengthy cross-examination of both these prosecution witnesses was conducted by the defence counsel, wherein the victim reiterated her date of birth to be 07.10.2003. Learned counsel then had the full opportunity to cross question the victim in that respect, but the same was not done. It is also not the case that the petitioners could not have discussed the factual aspects of the case with their counsel, since at that time both the petitioners were on regular bail. At the stage,



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when the prosecution evidence had been closed on 14.02.2024, and the case was kept pending for defence evidence, that the application under Section 311 Cr.P.C. was filed on 13.11.2024, wherein not even the specific and detailed aspect qua which the two prosecution witnesses was sought to be recalled mentioned.

10. Trite to say that though the Court is vested with the power to call witnesses at any stage in order to meet the ends of justice, however, it must be cautioned to ensure that the same is not sought to be invoked only to fill up the lacunas left behind in a case, or be used as a tactic to delay the proceedings.

11. In light of the foregoing discussion and in view of the judgments referred to herein-above, this Court is of the considered view that the impugned order was passed after taking into account all the facts and circumstances as also the arguments advanced and evidence produced before it. The same being speaking, well reasoned and based upon correct appreciation of facts needs no interference. As a corollary, the present revision petition stands dismissed.

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

(KIRTI SINGH)
JUDGE

22.07.2025

Kavita

Whether speaking/reasoned. : Yes/No
Whether Reportable. : Yes/No