

(2025) 07 KL CK 1239

In the High Court Of Kerala

Case No : Criminal Miscellaneous Petition No. 6477 Of 2025

Shiju Krishnan

APPELLANT

Vs

State Of Kerala

RESPONDENT

Date of Decision : 29-07-2025

Acts Referred:

Bharatiya Nagarik Suraksha Sanhita, 2023 — Section 348, 528
Code of Criminal Procedure, 1973 — Section 311
Indian Penal Code, 1860 — Section 323, 376, 506
Protection of Children from Sexual Offences Act, 2012 — Section 3(a), 4, 7, 8

Citation : (2025) 07 KL CK 1239

Hon'ble Judges : G. Girish, J

Bench : Single Bench

Advocate : Rebin Vincent Gralan, Dinesh G Warriar, G.Sudheer

Final Decision : Dismissed

Judgement

G. Girish, J

1. Can the powers under Section 311 Cr.P.C (Section 348 of the Bharatiya Nagarik Suraksha Sanhita, 2023) be invoked for recalling and subjecting the victim of a rape and POCSO offence to further cross-examination, for changing her evidence in consonance with a compromise entered with the accused during the course of trial of that case? This is the crux of the matter to be resolved in this case.

2. The petitioner is the accused in S.C No.517/2024 on the files of the Fast Track Special Court-II, Thrissur who faces criminal prosecution for the commission of offence under Sections 376, 323 and 506 I.P.C and Sections 4 r/w 3(a) and 7 r/w 8 of the Protection of Children from Sexual Offences Act, 2012.

3. The prosecution case is that the petitioner committed penetrative sexual assault upon a minor girl at a hotel room in Thrissur, while she was being taken back to her house from a film shooting location, in the wee hours of 18.01.2023.

In the trial before the Special Court, 28 witnesses were examined from the part of the prosecution as PW1 to PW28, among whom, the victim girl was PW1. At a time when the case stood posted for examination of the Investigating Officers, the accused managed to get the case compromised with the victim, and approached this Court by filing CrI.M.C No.9553/2024 for quashing the criminal prosecution against him. An affidavit purportedly signed by the victim, stating that she has no subsisting grievance against the petitioner/accused, was filed in that case. As a consequence, the petitioner/accused moved the Special Court by filing Annexure-A1 petition under Section 311 Cr.P.C (Section 348 of the BNSS) for recalling and subjecting the de facto complainant/victim/PW1 to further cross-examination for bringing out the subsequent development of settlement of the issue between the parties. The learned Special Judge, by the order dated 27.11.2024, dismissed the above application with the observation that the petitioner did not bring out any circumstances which would show that it was essential to recall PW1 for the just decision of the case. That apart, it was noted in the said order that, the petition filed by the accused before this Court for quashing the F.I.R and final report in that case, is pending consideration. Aggrieved by the aforesaid order, the petitioner has approached this Court with this petition filed under Section 528 BNSS.

5. Heard the learned counsel for the petitioner and the learned Public Prosecutor representing the State of Kerala.

6. Section 311 of the Code of Criminal Procedure, which is *pari-materia* with Section 348 BNSS, reads as follows:

"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. As per the first part of the aforesaid Section, the Court may summon and examine any person as the witness or examine any person who is in attendance even though he was not summoned as a witness, or recall and re-examine any person already examined. The second portion of the aforesaid Section envisages that 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. While it is optional for the Court under the first portion of the said Section to summon and examine any witness or recall and re-examine any witness already examined, the second portion is somewhat mandatory in nature since it is incumbent upon the court to examine or recall and re-examine such persons if his evidence appears to be essential for the just decision of the case. It is well settled that the powers under Section 311 Cr.P.C cannot be exercised for every drop of the hat. Unless there are valid and sufficient grounds for ordering the examination or recall and re-examination of the witnesses concerned, the Courts

shall be loath in resorting to the aforesaid procedure envisaged under Section 311 Cr.P.C.

8. In the case on hand, PW1, the victim girl, was already examined in detail before the Special Court. She was subjected to extensive cross-examination. Thereafter, 27 more witnesses were examined from the part of the prosecution towards establishing the charge levelled against the accused. It was at that stage that the accused managed to strike a compromise with the victim. Consequent to the above compromise, the petitioner/accused wants to further cross-examine the victim girl, obviously to obliterate the incriminating evidence, which she had tendered at the first instance.

9. According to the petitioner, PW1 tendered evidence before the Trial Court under external influence combined with ulterior motive of punishing an innocent person. It is further contended that the victim, after becoming major, has come out of the misconceptualized state of mind and expressed her willingness to her counsel to appear before the Trial Court. Thus, it is stated that the victim now wants to put forward a new version, through which the innocence of the accused could be established.

10. The reason why the petitioner wants to further examine PW1 is, thus, to make her state before the Trial Court that the testimony which she earlier tendered was factually incorrect and that it was made under external influence with the ulterior motive of punishing an innocent person. In other words, the attempt of the petitioner is to compel the survivor to state before the Trial Court that the incident of rape which she narrated earlier, did not happen, and that her evidence in the above regard was false. The endeavour of the petitioner in the above regard would definitely amount to degrading the sanctity and credibility of judicial proceedings. The Courts are not expected to be privy to such attempts of the parties who are having no qualms in sabotaging judicial process by compelling witnesses to change their stands and to resort to approbation and reprobation to suit their convenience. It is to be noted that the survivor in this case had, in addition to her statement to the Investigating Officer, stated before the Magistrate that she was subjected to penetrative sexual assault by the accused. She reiterated the above version, and unwaveringly faced cross-examination when she was examined as the first prosecution witness in the case. Now the effort being made by the petitioner/accused is to persuade the survivor to confess before the Trial Court that she had launched false prosecution and gave false evidence about the penetrative sexual assault perpetrated upon her by the accused/petitioner. No doubt, the above venture of the petitioner/accused cannot be given the stamp of approval of this Court, since the attempt of the petitioner in this regard is to subvert the due process of law.

11. In *Mishrilal and Others v. State of M.P and Others* [(2005) 10 SCC 701], the Hon'ble Supreme Court has deprecated the practice of recalling and re-examining a witness, who was examined in chief and cross-examined fully, to deny the evidence he had already given before the court. The relevant paragraph of the

said judgment is extracted hereunder:

"6. In our opinion, the procedure adopted by the Sessions Judge was not strictly in accordance with law. Once the witness was examined-in-chief and cross-examined fully, such witness should not have been recalled and re-examined to deny the evidence he had already given before the court, even though that witness had given an inconsistent statement before any other court or forum subsequently. A witness could be confronted only with a previous statement made by him. At the time of examination of PW2 Mokam Singh on 6-2-1991, there was no such previous statement and the defence counsel did not confront him with any statement alleged to have been made previously. This witness must have given some other version before the Juvenile Court for extraneous reasons and he should not have been given a further opportunity at a later stage to completely efface the evidence already given by him under oath. The courts have to follow the procedures strictly and cannot allow a witness to escape the legal action for giving false evidence before the court on mere explanation that he had given it under the pressure of the police or for some other reason. Whenever the witness speaks falsehood in the court, and it is proved satisfactorily, the court should take a serious action against such witnesses."

12. A similar issue as of the case on hand came up for consideration of the Hon'ble Supreme Court in Rama Paswan and Others v. State of Jharkhand [(2007) 11 SCC 191]. In the aforesaid case relating to the commission of offence under Section 376 I.P.C, a petition under Section 311 Cr.P.C for recalling the victim for further cross-examination, was filed before the Trial Court, on the ground that the parties have settled the dispute outside the court at the intervention of the well wishers, and also that the informant could not identify the persons who allegedly committed the offence due to darkness. The dismissal of the above petition was challenged before the High Court in a petition filed under Section 482 Cr.P.C. Since the High Court also dismissed the petition stating the reason that the prayer to recall the victim is not acceptable, as the victim had already been cross-examined during trial in respect of the offence under Section 376 I.P.C which is not compoundable, the accused had approached the Hon'ble Apex Court with the CrI.Appeal. Affirming the law that the further examination of the victim on the ground of compromise cannot be allowed in cases where the offence alleged is under Section 376 I.P.C, the Apex Court held as follows in paragraph No.10 of the aforesaid judgment:

"10. Considering the ambit of Section 311 of the Code, it does not appear to be a case where any interference is called for. What is the effect of evidence already recorded shall be considered by the trial court. Since Section 376 IPC is not compoundable in terms of Section 320 of the Code, the trial court and the High Court rightly rejected the prayer. We find no scope for interference in the appeal. Our non-interference shall not be construed as if we have expressed any opinion on the merits of the case."

13. A learned Single Judge of this Court had the occasion to deal with an

identical issue in *Bineesh G v. State of Kerala and Another* [2019 KHC 363]. Upholding the consistent views against invoking Section 311 Cr.P.C for the further examination of the victim pursuant to compromise in rape cases, it has been observed in that decision that such an exercise would not only be illegal but also perverse. The observation of this Court in paragraph No.8 of that judgment is extracted hereunder:

"8. Therefore, in view of the abovesaid elementary aspects of the matter, the aspect relating to settlement between the petitioner - accused and victim girl for offence under S.376 of the IPC is really immaterial and irrelevant as far as the impugned criminal proceedings are concerned. PW - 2 has given elaborate evidence at the time of examination in chief as well as at the time of elaborate cross - examination conducted by the defence. Therefore the Sessions Court cannot be found fault with for having come to the considered conclusion that the attempt of the petitioner - accused is actually to recall the witness so as to make her to give version which is inconsistent with the version which has already before the Court below and deny and rebut and such attempt is clearly impermissible and which will be highly improper and illegal for the Trial Court to accede to such request. Such exercise would not only be illegal but also perverse. In that view of the matter, the learned Sessions Court cannot be found fault with for having taken the considered view that the plea of the petitioner is only to be rejected. The impugned order cannot be said to be vitiated as illegal or improper or perverse. Therefore, it is only to be held that the petitioner has not disclosed any valid grounds for this Court to exercise the extra ordinary powers under S.482 of the Cr.P.C which is essentially to ensure that justice is meted out to both sides and to ensure that prevention of grave miscarriage of justice."

14. In the light of the settled principles of law evolved out of the aforesaid decisions of the Apex Court and this Court, the impugned order of the Fast Track Special Court-II, Thrissur, disallowing the petition filed by the petitioner under Section 311 Cr.P.C, cannot be found to be erroneous. Needless to say that the present petition is devoid of merits.

The petition is accordingly dismissed.