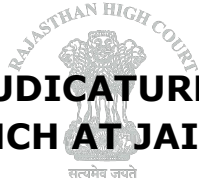




RAJASTHAN HIGH COURT
HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR



S.B. Criminal Miscellaneous (Petition) No. 6180/2021

1. Shankar Son Of Jamna Lal, Resident Of Balita Colony, Patthar Mandi, Kota (Raj).
2. Karam Singh Son Of Shri Sundar Singh, Resident Of Gokul Nagar Kachhi Basti, Bharatpur (Raj).

----Petitioners

Versus

State of Rajasthan, Through P.P.

----Respondent

For Petitioner(s) : Ms. Rachna Shukla for
Mr. Raj Kumar Kasana
For Respondent(s) : Mr. Jitendra Singh Rathore, PP

JUSTICE ANOOP KUMAR DHAND

Order

18/04/2026

Reportable

As per verse 9.3 of *Manusmriti*, it is the duty of every man to protect woman, marriage and children from such wedlock. It says:

*"Pita Rakshati Kaumare, Bharta Rakshati Yauvane.
Rakshanti Sthavire Putra, Na Stri Svatantryamarhati."*

Meaning thereby that "Father protects in childhood, husband in youth and sons in old age. A woman must never be left unprotected".

Courts are not mere arbiters of breakdown of marriage, but guardians of the institution of marriage, especially when children are born from the wedlock. As declared in *Manusmriti* 9.1, *Dharma* governs the husband and wife not only in 'sanyoga' but also in 'viprayoga'- i.e. - during union and separation.



Likewise, Verse 1.85 of *Yajnavalkya Smriti* says that when the matrimonial home fails to protect, the duty devolves upon the King – today, the Court - to act as *parens patriae* for the woman and children.

1. Here in the instant case also a situation has arisen, where after the deposition of victim and her mother on oath, the petitioner-Shankar solemnized marriage with the victim and put from the wedlock, a child was also born, hence, under the changed circumstances, the situation has arisen where the victim and her mother can be recalled again in the witness-box for their re-examination in the Court, where the accused is facing trial.

2. By way of filing the instant criminal misc. petition, a challenge has been made to the impugned order dated 06.09.2021, passed by the Special Judge, Protection of Children From Sexual Offences Act and Commission for Protection of Child Right Act, No.4, Kota in CIS No.447/2018, by which the application submitted by the accused petitioners (hereinafter referred to as 'accused') for recalling the prosecution witnesses PW-1 'G' and PW-2 'M' has been rejected.

3. Perusal of the record indicates that the accused are facing trial for the offences under Sections 376, 363 and 366 IPC and under POCSO Act. During the course of trial, statements of the prosecutrix PW-1 'G' and her mother PW-2 'M' were recorded. After recording of their statements before the Trial Court, the prosecutrix performed marriage with the accused-Shankar and form their wedlock, a daughter-Radha was born on 13.08.2020, hence, under the changed circumstances, an application was submitted by the accused for recalling the aforesaid witnesses in





the interest of justice. The aforesaid application was opposed by the learned Public Prosecutor and subsequently, the learned Magistrate has declined the aforesaid prayer of the accused.

4. If under the changed circumstances, after recording the statements of the prosecutrix and her mother, the prosecutrix has performed marriage with the accused-Shankar and from their wedlock a child has been born, statements of the prosecutrix and her mother can be recorded again in the best interest of the parties in order to save their wedlock. After marriage of the petitioner with the prosecutrix, if any child has born from their wedlock, then it is the duty of the petitioner to protect both the prosecutrix and the child and they cannot be left unprotected.

5. At present, the trial is still going on and if the prosecutrix is recalled, no prejudice would be caused to the prosecution and to any other person. As such, this Court can invoke the power provided under Section 311 of Cr.P.C for recalling of these witnesses.

6. The scope and object of Section 311 of Cr.P.C is to enable the Court to determine the truth and to render a just decision after discovery all relevant facts and obtaining proper proof of such facts, to arrive at a just decision of the case. This power must be exercised judiciously and not capriciously or arbitrarily as any improper or capricious exercise of such power may lead to undesirable results. Undoubtedly, an application under Section 311 of Cr.P.C cannot be allowed only to fill up a lacuna in the case of the prosecution, or of the defence or to the disadvantage of the accused or to cause serious prejudice to the defence of the accused or to give an unfair advantage to the opposite party.





7. In case the statements of the prosecutrix and her mother are not recorded again by re-summoning them, it would certainly destroy the matrimonial life of the prosecutrix and accused-Shankar and it would destroy the future of their daughter born from the wedlock. Hence, in the best interest of both parties, this Court deems it just and proper to allow the application submitted by the accused under Section 311 Cr.P.C.

8. Accordingly, the instant criminal misc. petition stands allowed. The impugned order dated 06.09.2021 stands quashed and set-aside. The Trial Court is directed to summon PW-1 'G' and PW-2 'M' and record their evidence and thereafter, decide the case after appreciating their evidence strictly in accordance with law.

9. The stay application and all pending applications, if any, also stand disposed of.

(ANOOP KUMAR DHAND),J

KuD/8