

SL. No.	Date	Office Notes, reports, orders or proceedings or directions and Registrar's order with Signatures	COURT'S OR JUDGE'S ORDERS
	05.06.2026		C482 No.417 of 2020 <u>Hon'ble Siddhartha Sah, J.</u> Mr. Pankaj Sharma, learned counsel for the applicant. 2. Mr. Sandeep Sharma, learned AGA along with Ms. Rangoli Purohit, learned Brief Holder for the State/respondent no.1. 3. Vide order dated 13.10.2023, the Coordinate Bench of this Court, while noticing the office report dated 12.10.2023, observed that respondent no. 2 had been served with notice through the secondary mode. However, in order to ensure effective service upon respondent no. 2, the Chief Judicial Magistrate, Haridwar, was directed to serve the notice personally upon respondent no. 2. In pursuance of the order dated 13.10.2023, the office report dated 04.06.2026 reveals that notice has been served upon respondent no. 2 personally; however, none is present on her behalf. 4. By means of the present application under Section 482 Cr.P.C., the applicant has challenged the order dated 17.01.2020 passed by the learned Additional District Judge/FTC, Roorkee, District Haridwar, in Special Sessions Trial No. 115 of 2018, State vs. Alisher, under Sections 354(d), 504, 506 and 376/511 IPC, Sections 3(1)(r), 3(1)(s) and 3(2)(w)(i)(ii) of the SC/ST Act, and Sections 7/8 and 18 of the Protection of Children from Sexual Offences Act, Police Station Gangnahar, Roorkee, District Haridwar, pending before the learned Additional District Judge/FTC, Roorkee, District Haridwar, whereby the application filed by the

		applicant under Section 311 Cr.P.C. seeking summoning of PW-1, PW-2 and PW-3 for cross-examination has been rejected. It is further prayed that the application under Section 311 Cr.P.C. be allowed 5. Brief facts of the case are that an FIR was lodged on 08.07.2018 at P.S. Gangnagar, Roorkee, District Haridwar, regarding an incident involving the minor daughter of the informant. Pursuant to the said FIR, the investigation culminated in the filing of a charge sheet against the applicant, and the matter was committed to the Court of Sessions for trial. The same is pending as Special Sessions Trial No. 115 of 2018, State vs. Alisher, under Sections 354(d), 504, 506 and 376/511 IPC, Sections 3(1)(r), 3(1)(s) and 3(2)(w)(i)(ii) of the SC/ST Act, and Sections 7/8 and 18 of the Protection of Children from Sexual Offences Act, P.S. Gangnagar, Roorkee, District Haridwar, before the learned Additional District Judge/FTC, Roorkee, District Haridwar. 6. In the aforesaid Special Sessions Trial No. 115 of 2018, the prosecution examined PW-1, PW-2 and PW-3. However, at the time of recording the evidence of PW-1, PW-2 and PW-3, the counsel engaged by the applicant did not appear before the Court, and consequently, the trial court closed the opportunity of the applicant/defence to cross-examine the said witnesses. Thereafter, on 06.12.2019, the applicant moved an application under Section 311 Cr.P.C. for summoning PW-1, PW-2 and PW-3 for cross-examination. However, vide order dated 17.01.2020, the trial court rejected the said application. 7. Assailing the said order dated 17.01.2020, whereby the application under Section 311 Cr.P.C. has been rejected by the trial court, learned counsel
--	--	---

			for the applicant would submit that the cross-examination of PW-1 (the victim), PW-2 (Mamta) and PW-3 (Sunil) could not be conducted solely on account of the absence of the counsel engaged by the applicant/accused before the trial court. He would further submit that rejection of the application under Section 311 Cr.P.C. would amount to a violation of the principles of natural justice and denial of an opportunity of hearing to the applicant. Since, without cross-examination, the applicant/accused would not be able to effectively put forth his defence before the trial court, serious prejudice would be caused to him. 8. Per contra, learned counsel for the State took the Court through the impugned order dated 17.01.2020 and submitted that the trial court has not committed any error in passing the impugned order, inasmuch as, on repeated occasions, the defence/applicant's counsel failed to cross-examine the victim as well as the other witnesses. 9. Learned State Counsel drew the attention of this Court to the provisions of Section 33(5) of the Protection of Children from Sexual Offences Act, 2012, and submitted that "the Special Court shall ensure that the child is not called repeatedly to testify in the Court." 10. Having heard the rival contentions of both the parties, it is evident that the applicant has not been as vigilant as he ought to have been in pursuing the proceedings before the trial court and in cross-examining the prosecution witnesses. However, the fact remains that the absence of cross-examination of the witnesses would tantamount to denial of an opportunity of hearing and denial of justice. It has also been submitted on behalf of the applicant that it was due to the sheer negligence of the counsel engaged by the applicant that the cross-examination
--	--	--	---

			could not be conducted on the aforesaid dates. He further submits that if one final opportunity is granted to the applicant to cross-examine the prosecution witnesses through his counsel, he shall avail the same and shall not seek any adjournment whatsoever, and the cross-examination shall be conducted on the very same day. 11. On this, learned counsel for the State does not have any serious objection. 12. In view of the aforesaid, since the closure of the opportunity to cross-examine the prosecution witnesses would amount to denial of justice to the applicant/accused herein, purely in the interest of justice, the applicant is granted one last opportunity to cross-examine the prosecution witnesses. However, it is made clear that the said cross-examination shall be conducted on the same day, shall be completed on that very date, and no adjournment whatsoever shall be granted. 13. In view of the aforesaid, the impugned order dated 17.01.2020 is hereby set aside. It is directed that the trial court shall issue notices to the prosecution witnesses to remain present on the next date fixed before it, and the defence counsel shall be permitted to cross-examine PW-1, PW-2 and PW-3 on the said date. No adjournment shall be granted to the applicant, and the cross-examination shall be completed on the very same day. 14. With the aforesaid observations, the application under Section 482 Cr.P.C. is allowed. (Siddhartha Sah, J.) 05.06.2026 BS
--	--	--	---