

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Revision No. 777 of 2016**

- Pappu @ Ashok Kumar Sahu S/o Munu Babu Sahu Aged About 25 Years R/o Village Aurda, P.S. Pusaur, District Raigarh Chhattisgarh

---- Applicant**Versus**

- State Of Chhattisgarh Through - Special Additional District Judge F. T. C. Raigarh Chhattisgarh

---- Respondent

For Applicant
For State

Ms. Aparna Diwan, Advocate
Mr. Ashok Swarnkar, Panel Lawyer

SB: Hon'ble Shri Justice P.Sam Koshy**Order On Board****24.10.2016**

1. The present Petition has been preferred assailing the order dated 18.07.2016 passed by the Special Additional District Judge in Special case No. 81/2014.
2. Vide the impugned order the Court below has rejected the application under section 91(2) of the CrPC preferred by the Applicant.
3. A brief fact of the preset case is that the present applicant is an accused in the Criminal Case No. 103/2014 pending before the Court below wherein the Applicant has been charged for the offence punishable under Section 456, 376 IPC and Sections 3 & 4 of the Protection of Children from Sexual Offences Act 2012 (in short 'the POCSO Act') the matter is pending before the Court below since

2014. After framing of charge, prosecution for the first time was permitted for leading of the evidence in its support on 19.01.2015. The prosecution took almost 13 months to complete its evidence and prosecution evidence were closed only on 04.02.2016. After the prosecution evidence was closed the matter was proceeded further for recording statement of accused Applicant under Section 313 of the Cr.P.C. on 24.02.2016. On the said date after recording of the statement under Section 313 Cr.P.C. the matter was posted for the defence to lead evidence if any. The defence i.e. the Applicant has cited 5 witnesses in his support namely (i) Munbabu Sahu (ii) Sanjay Sidar (iii) Gouri Shankar (iv) D.S. Bhagat (v) Mohan Lal Patel as defence witnesses. The same was permitted by the Court and the Court proceeded further to record defence evidence. Four witnesses as cited were examined and the fourth witness was examined on 17.06.2016. Subsequently, the matter was proceeded for evidence of the 5th witnesses Mohan Lal Patel for which summons were issued and the matter was fixed for 2.7.2016.

4. What is to be seen at this juncture is that though summons were issued for the presence of the 5th witness on a couple of occasions. The said witness could not appear on 11.7.2016 due to non-service of the summon and the Court below has closed the right of leading defence evidence and fixed the case for final hearing on 18.07.2016. On 18.07.2016 the Applicant accused moved an application under 91 of the CrPC calling for call details of the mobile phone which was in possession of the accused. The same was however rejected by the Court below on 18.07.2016 holding that the said information was not of any relevance to the offence for which the Applicant has been

charged with. According to the Court below the details of the call would not in any manner come to assist the defence to disapprove the allegation. The Court below further taking into consideration the seriousness of the offence for which Applicant has been charged and the fact that it is the mandate of the Supreme Court for expeditious trial in respect of cases where the crime is against a woman, has rejected the same.

5. Learned Counsel for the Applicant assailing the impugned order submits that the information so sought for by the Applicant before the Court below is highly necessary so as to prove the defence of the Applicant accused. Counsel for the Applicant submits the accused was not present at the place of incident as alleged by the Prosecutrix and at that relevant point of time he was at a far away place. It was not possible for him to reach to the place of incident on the said date.
6. She further argues that the information so sought under Section 91 of the Cr.P.C. should not have been refused by the Court below for the fact that it is not only effective for defence of the accused person but is also necessary for a fair and just trial. She highlighted the issue that if the said application was allowed the information so collected would have also made the case more transparent and which would have been more advantageous in the favour of the accused person.
7. Learned Counsel for the Applicant relied upon the decision of Supreme Court in case of **V.K. Sasikala v. State**¹. She further relies upon the decision of this Court in case of **Santosh v. State of Chhattisgarh** in Criminal Revision No. 287/2001 decided on

¹ (2012) 9 SCC 771

29.08.2001.

8. It would be relevant at this juncture to take note of the fact that admittedly the present Applicant in the instant case has been charged for the offence punishable under Sections 486 & 376 IPC and also Section 3 & 4 of the POCSO Act. The trial in the instant case had commenced in the year 2014. The prosecution closed its evidence on 04.02.2016 and the matter was fixed for final argument on 18.07.2016.
9. What is relevant to take note of is the fact that the said application under Section 91 of CrPC for the first time has been filed in only on 18.07.2016 before the Court below calling for information from the prosecution which is not the part of the case diary. Also, the same was filed at the stage where the prosecution witnesses have already been examined and exhaustively cross examined by the Petitioner and evidence of the prosecution already stands closed and neither during the cross-examination of these witnesses any such specific question were put forth by the prosecution.
10. Further, it is also reflects that the information sought for by the application under Section 91 Cr.P.C. is also not enclosed with the petition. The call details of the 2 mobile numbers may not be of much relevance to the Applicant to prove his defence in as much as these mobile number could also have been used by any other members of the family or nearby close relative or friends. The case against the accused is that of Section 376 IPC where the standard of proof is all together different which is required for establishing the offence alleged. In the opinion of this Court the Court below has not committed any error of law or for that matter any error while rejecting

the same particularly when the same has been filed at the stage of final hearing. So far as the judgement of the supreme court in the case of V.K. Sasikala v. State (Supra) is concerned the judgment has been pronounced under different factual matrix of the case which is totally in any manner not related with the nature of the offence shown in the present case and the said judgment is therefore distinguishable in its facts itself. So far as the judgment of Santosh v. State of Chhattisgarh (Supra) that again is the case where the nature of dispute was of not enclosing evidence collected during the course of the inquest along with the charge sheet therefore is again distinguishable on the facts of the present case where the document sought for is not part of the charge sheet nor does it prima facie looks relevant for establishing defence of the Petitioner. Accordingly the judgment in case of Santosh v. State of Chhattisgarh passed by this Court is also distinguishable on its facts.

11. Considering the nature of the offence alleged against the present applicant and the stage at which the application was moved and also the nature of the details which is required, this Court is of the opinion that the Court below has not committed any error of law while rejecting the same. The Revision Petition accordingly stands rejected.
12. No order as to cost.
13. As a consequence interim order earlier passed by this Court on 27.09.2016 also stands vacated.

Sd/-

**(P. Sam Koshy)
JUDGE**