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HIGH COURT OF CHHATTISGARH, BILASPUR**CRR No. 1111 of 2016**

1. Bijendra Prasad Sahu S/o Late Shri Gahru Ram Sahu, Aged About 57 Years R/o Kanchanpur, District Korla, Chhattisgarh, At Present Address R/o Village Mahora, Post & Police Station Patna, Tehsil & District Baikunthpur, Chhattisgarh.
2. Vipin Kumar @ Pintu S/o Bijendra Prasad Sahu Aged About 28 Years R/o Kanchanpur, District Korla, Chhattisgarh.

---- Petitioners**Versus**

- State Of Chhattisgarh Through The Station House Officer, Police Station Baikunthpur, District Korla, Chhattisgarh.

---- Respondent

For Petitioners	:	Shri P.P.Sahu and Shri Raj Kumar Pali, Advocate
For Respondent/State	:	Shri Vijay Bahadur Singh, P.L.

Hon'ble Shri Justice Sanjay Agrawal**Order On Board****03/02/2017**

1. Heard on admission.
2. Petitioners have filed this criminal revision under Section 397 read with Section 401 of the Code of Criminal Procedure, 1973 (for short, the Cr.P.C.) by questioning the order dated 08.03.2016, by which, application for re-examination of Tahsildar as well as the complainant Smt. Vifaiya Bai has been refused.
3. Shri P.P.Sahu, learned counsel for the petitioners submits that the application for re-examination of Smt. Vifaiya Bai and concerned Tahsildar was wrongly refused. It is submitted further that the said application has been refused merely on the ground that as the complainant Smt. Vifaiya Bai was already

examined on 07.05.2012, and therefore, the application cannot be allowed. It is, however, submitted by the learned counsel for the petitioners in this regard that as per the direction issued by the trial Court on 23.02.2016 to the concerned Tahsildar, Baikunthpur, for furnishing the original record in order to ascertain that under what circumstances the alleged caste certificate (Article A-1) was issued, report was submitted by the concerned Tahsildar, Baikunthpur on 25.02.2016 informing the Court that the concerned record, bearing Revenue Case No. 1806/B-121/2006-07, is not available in the Office, and therefore, the concerned original record could not be furnished before the Court. It is submitted further that since the report itself was furnished in the year 2016, and therefore, the reasons as assigned by the trial Court while refusing the application filed under Section 311(2) of the Cr.P.C. are not proper and sustainable.

4. On the other hand, Shri V.B. Singh, learned Panel Lawyer has supported the order impugned and stated that since the complainant – Smt. Vifaiya Bai has already examined on 07.05.2012 and no effort was made by the petitioner, thereafter on several hearings, therefore, at this stage, the application was rightly refused by the trial Court.

5. I have heard learned counsel for the parties and perused the record carefully.

6. From perusal of the record would reveal that the charge sheet has been submitted on 25.02.2009 against the petitioners with regard to offence punishable under Sections 279, 337 and 323 of the I.P.C. and Section 3 (1) (x) of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989 (for short 'the Act, 1989'), and charges have also been framed thereafter on 05.07.2011. One of the charges, so framed, is with regard to the offence punishable under Section 3(1)(x) of the Act, 1989, therefore, it is necessary to examine the authenticity of the said caste certificate. Perusal of the record would

reveal further that despite direction being issued by the trial Court, the original record under which, the alleged caste certificate was issued, could not be furnished as evidenced by the report dated 25.02.2016 submitted in this regard by the Office of concerned Tehsildar. Since the said report was furnished on 25.02.2016, and therefore, in order to ascertain the genuineness of the alleged caste certificate, the instant application has been made for re-examination of the complainant Smt. Vifaiya Bai and the concerned Tahsildar.

7. Having considered the said fact, the reasons as assigned by the trial Court while rejecting the application filed under Section 311 (2) of the Cr.P.C. that since Smt. Vifaiya Bai was examined on 07.05.2012 and no effort was ever made thereafter despite several adjournments being made in the matter, are not proper as the report itself was submitted in the year 2016. I, therefore, set aside the order impugned and allowed the said application filed under Section 311 (2) of the Cr.P.C. Accordingly, one opportunity is hereby provided to the petitioners to re-examine Smt. Vifaiya Bai as well as the concerned Tahsildar, Baikunthpur and the trial Court is directed to conclude the said evidence as early as possible preferably within the period of two months from the date of receipt of copy of this order.

8. The revision is allowed, in view of the above mentioned terms.

Sd/-

(Sanjay Agrawal)
Judge