

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Revision No.939 of 2018

Rajkumar Pando, S/o Ranglal Pando, aged about 25 years, R/o Sharishtal,
P.S. Manendragarh, District Koriya, Chhattisgarh

---- Applicant

versus

State of Chhattisgarh through Station House Officer, Police Station
Manendragarh, District Koriya, Chhattisgarh

--- Respondent

For Applicant	:	Shri Shakti Raj Sinha, Advocate
For Respondent	:	Shri S.R.J. Jaiswal, Panel Lawyer

Hon'ble Shri Justice Arvind Singh Chandel

Order on Board

11.9.2018

1. With the consent of Learned Counsel appearing for the parties, the matter is heard finally.
2. The instant revision has been preferred against the order dated 1.8.2018 passed by the 1st Additional Sessions Judge, Manendragarh in Special Sessions Trial No.31 of 2016, whereby the Learned Additional Sessions Judge has rejected the application moved by the Applicant/accused under Section 311 of the Code of Criminal Procedure.
3. It is alleged that the Applicant abducted the prosecutrix on 10.5.2016 in the night hours, took her to a nearby situated school and committed sexual intercourse with her there. A charge-sheet was filed against him for offence punishable under Sections 363, 366, 342, 376(2)(j) of the Indian Penal Code and Sections 4 and 6 of the Protection of Children from Sexual Offences Act. During the

course of trial, at the stage of final arguments, an application under Section 311 of the Code of Criminal Procedure was filed by the Applicant on the ground that on 27.4.2018 an affidavit had been sworn-in by so called husband of the prosecutrix, namely, Ramsunder, wherein he deposed that the prosecutrix is his wife and she is living with him since 2015. Since the affidavit was received by the Applicant later on, at the time of recording of the defence evidence, he could not examine Ramsunder, who had sworn-in the affidavit and Shyam Bihari Raikwar, who had notarised the affidavit. Therefore, the application under Section 311 of the Code of Criminal Procedure was filed by him to call Ramsunder and Shyam Bihari Raikwar as defence witnesses and after their examination, in case of requirement, to call the prosecutrix for her further cross-examination with regard to the affidavit. The said application has been rejected by the Trial Court. Hence, this revision.

4. Learned Counsel appearing for the Applicant submits that the Applicant received the affidavit sworn-in by Ramsunder later on. Statements of Ramsunder and Shyam Bihari Raikwar are essential for just disposal of the trial and, therefore, they may be permitted to be called as defence witnesses. He further submits that if after recording of their statements, in case of requirement, the prosecutrix may also be permitted to be called for her further cross-examination to conflict the statements of the above two defence witnesses.
5. Learned Counsel appearing for the State opposes the prayer.

6. I have heard Learned Counsel appearing for the parties and perused the material available with due care.
7. Having regard to the facts and circumstances of the case and having heard the contentions raised on behalf of the parties, I am of the considered opinion that it would be in the interest of justice to permit the Applicant to call Ramsunder and Shyam Bihari Raikwar as defence witnesses and the Applicant also deserves liberty to call the prosecutrix for her further cross-examination, if required. Ordered accordingly.
8. Resultantly, the revision is allowed in the aforesaid terms.

Sd/-
(Arvind Singh Chandel)
Judge