

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Revision No.1421 of 2018

Arising Out of PS. Case No.-134 Year-2018 Thana- KHUSRUPUR District- Patna

Sumit Kumar @ Mithun Pandey Son of Srikant Pandey, a resident of
Mohalla- Chhoti Nawada, Police Station- Khushrupur, District- Patna.

... .. Petitioner/s

Versus

The State Of Bihar

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Arvind Kumar Mouar, Adv
For the Respondent/s : Mr. Dr. Indivar Kumari, APP

CORAM: HONOURABLE MR. JUSTICE S. KUMAR
ORAL JUDGMENT
Date : 21-01-2019

Heard parties.

2. This criminal revision petition has been filed against the order dated 26.03.2018, passed by the learned Additional Sessions Judge-1st cum Special Judge, POCSO, Patna, in connection with Special Case No. 112 of 2018 arising out of Khusrupur P.S. Case No. 134 of 2018 by which the learning Special Judge, POCSO, Patna, has rejected the application of petitioner under section 311 of Cr.P.C.

3. Informant-Sweta Rani has lodged written complaint before the SHO Khusrupur P.S. Patna on 12-6-2018 that while she was going to her school Sumit Kumar @ Mithun Pandey used to tease her and make vulgar comments and taken some photos of her on his mobile and threatened to get the same



viral.

4. A petition was filed on 11.10.2018 by the accused-petitioner under section 311 of Cr.P.C to recall the Prosecution Witness No. 1 who is the Informant herself for further cross examination as she could not be cross-examined on some vital aspects, and in the interest of justice she ought to be re-called for cross-examination.

5. The petition filed by defence was contested by prosecution and it was submitted that to fill up the lacunae of the witness examined, cross-examined and discharged cannot be recalled for further cross-examination.

6. After hearing the parties the court has held that the victim Prosecution Witness No. 1 was examined and thereafter she was cross examined by the defence and thereafter she was discharged. Thereafter four more prosecution witnesses have been examined and they have been fully cross-examined by the defence and as such the present petition filed on behalf of prosecution is just to delay the trial to fill up the lacunae which is not permissible. It has been further held by the court below that the victim is a minor girl and she cannot be called for re-examination leading to mental torture and same will be also in contravention of Section 33(5) of POCSO Act and as a



consequence the POCSO court dismissed the application by its order dated 26.03.2018.

7. After hearing learned counsel for the petitioner and learned counsel for the state, this court does not find any illegality or irregularity in the order passed by the Special Judge, POCSO, Patna and accordingly the criminal revision petition is dismissed. Special Judge, POCSO, Patna is directed to conclude the trial at the earliest.

(S. Kumar, J)

ranjan/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	09.02.2019
Transmission Date	09.02.2019

