

HIGH COURT OF CHHATTISGARH, BILASPUR**CRMP No. 145 of 2019**

- Baikunth Lal Soni S/o Murlidhar Soni Aged About 55 Years R/o Mathpara, Chandi Chowk, Durg, Tahsil And District Durg Chhattisgarh

---- Petitioner**Versus**

1. Smt. Rukhsana Parveen W/o Jakir Hussain Aged About 45 Years R/o Subhash Nagar, Durg Tahsil And District Durg Chhattisgarh
2. State of Chhattisgarh Through District Magistrate, Durg District Durg Chhattisgarh

---- Respondents

For Petitioner	:	Shri T.K. Jha, Advocate
For Respondent/State	:	Shri Anant Bajpai, PL for the State

Hon'ble Shri Justice Goutam Bhaduri**Order On Board****17/01/2019**

1. Heard.
2. The present petition is against the order dated 28.12.2018 passed by the First Additional Sessions Judge, Durg in Criminal Revision No.167/18.
3. The facts of this case are that one complainant was examined in a case under Section 354 IPC in criminal case No.32704/03 in between State Vs. Baikunth Lal Soni therein after examination and cross-examination, the witness/complainant wanted to depose something but then the Judicial Magistrate dismissed the same on the ground that the examination-in-chief and

cross-examination has already been recorded. Against such observation, the complainant went into revision. The revisional Court directed that according to the memo of revision one line should be added that “the accused has also touched her waist with bad intention”.

4. Learned counsel for the petitioner submits that the said word has not been uttered and the revisional Court could not have directed for recording of such statement unless it is deposed, therefore, he submits that that part of the order of the revisional Court of recording the statement on the basis of the memo of revision cannot be sustained, accordingly that line may be omitted.
5. Perused the order. The deposition of the complainant after para 20 of the cross-examination reflects that she wanted to further add something. Section 138 of the Indian Evidence Act, 1872 defines the order of examinations, which includes that the witnesses shall be first examined-in-chief, then (if the adverse party so desires) cross-examined, then (if the party calling him so desires) re-examined. The complainant/witness in this case in all probability wanted to get her re-examined after cross-examination, the examination having been not allowed, the same was subject of revision and the revisional Court ordered that a word is to be added in the deposition on the basis of the pleading in the memo of revision. The deposition as has been ordered by the revisional Court on the basis of the pleading in the memo of revision cannot be added unless it is deposed by the witness. The witness would be free to depose anything and it is for the trial Court to examine the veracity of the same. The revisional Court cannot step into shoes of complainant and convert a pleading into evidence

unless it is been uttered before the Court below. Therefore, that part of the revisional Court's order whereby it is directed that one word is to be added in the deposition that "the accused had also touched the waste with a bad intention", stands deleted. The complainant shall be at liberty to re-examine herself before the Court below.

6. With such observation, the petition stands disposed of.

Sd/-

Goutam Bhaduri
Judge

Ashu