

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Revision No.654 of 2019

Mukesh Kumar Nishad, S/o Ramsagar Nishad, aged about 22 years, R/o Village Radheshyam's Sabji-badi, Khokhli, Police Station Bhatapara (Rural), at present Village Sanjari, Nawagaon (wrongly written as Nawagkaow), Police Station Simga, District (Revenue and Civil) Balodabazar, Chhattisgarh

---- Applicant

versus

State of Chhattisgarh through District Magistrate, Balodabazar, District Balodabazar-Bhatapara, Chhattisgarh

--- Respondent

For Applicant	:	Shri Sumit Jhanwar, Advocate
For Respondent	:	Shri Amit Singh, Panel Lawyer

Hon'ble Shri Justice Arvind Singh Chandel

Order on Board

17.6.2019

1. Heard on admission. Issue notice. Shri Amit Singh, Learned Panel Lawyer takes notice on behalf of the Respondent/State. With the consent of Learned Counsel appearing for the parties, the revision is heard finally.
2. The revision has been preferred against the order dated 30.3.2019 passed by the Special Judge under the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act (henceforth 'the Act'), Balodabazar in Sessions Trial No.15 of 2018, whereby the Special Judge has rejected the application under Section 311 of the Code of Criminal Procedure moved for recalling Prosecution Witness No.6, namely, Purushottamlal for further cross-examination.
3. Learned Counsel appearing for the Applicant submits that a trial is

going on before the Special Court against the present Applicant wherein the date of birth of the prosecutrix of the case is relevant. On 29.9.2018, Purushottamlal (PW6), Head Master of the Government Primary School, Tikulia, Bhatapara was examined before the Special Court. During recording of his statement before the Special Court, he proved birth entries of *Dakhil-Kharij* register relating to the prosecutrix. He deposed that the date of birth of the prosecutrix is mentioned as 7.6.2002. During pendency of the said trial, on 9.2.2019, the present Applicant obtained certified copy of the said *Dakhil-Kharij* register from witness Head Master Purushottamlal (PW6), wherein the date of birth of the prosecutrix is mentioned as 20.6.2000. Therefore, on 14.2.2019, an application under Section 311 of the Code of Criminal Procedure was filed by the Applicant before the Trial Court for further cross-examination of the said witness on that point and confronting him with the said entries of *Dakhil-Kharij* register obtained by the Applicant from the said witness. The Special Court has rejected the application only on the ground that Purushottamlal (PW6) has already been examined as a prosecution witness and, therefore, he cannot be called as a defence witness. Learned Counsel further submits that the Applicant had filed the application only for the purpose of further cross-examination of Purushottamlal (PW6) and for his confrontation with the entries in question relating to the date of birth of the prosecutrix and not for calling him as a defence witness.

4. From perusal of the application under Section 311 of the Code of Criminal Procedure, it is clear that there was no prayer for calling Purushottamlal (PW6) as a defence witness and the prayer was for

calling the witness for the purpose of his further cross-examination and his confrontation with the entries in question. Therefore, in my considered opinion, the impugned order of the Special Court is not in accordance with the material available.

5. Resultantly, the revision is allowed. The impugned order dated 30.3.2019 is set aside. The Trial Court is directed to summon Purushottamlal (PW6) for his confrontation with the entries of *Dakhil-Kharij* register and further cross-examination on the limited point of the aforesaid entries. The expenses of the said witness for his appearance before the Trial Court for the aforesaid purposes shall be borne by the Applicant.

Sd/-

(Arvind Singh Chandel)
Judge