

HIGH COURT OF CHHATTISGARH, BILASPUR**Order reserved on 31.07.2019****Order delivered on 20.09.2019****CRR No. 767 of 2019**

- Abhimanyu Goyal S/o Pawan Goyal Aged About 22 Years R/o Behind The Maruti Agency, Karbala Road, Bilaspur, House No. 30/428 In Front Of Manohar Boot House Gali, Police Station City Kotwali, Bilaspur, Chhattisgarh.

---- Applicant**Versus**

1. State Of Chhattisgarh Through Station House Officer, Police Station Supela, District Durg, Chhattisgarh.
2. Neha Agrawal W/o Pramod Jain Aged About 29 Years Presently At Block-03 Plot-01, Priyadarshini Campus, Nehru Nagar, Supela, District Durg, Permanent Address Near Deepshikha School, Utai, District Durg, Chhattisgarh.

---- Respondents

For Applicant	:	Mr. Hemant Kesharwani, Adv.
For Respondents/State	:	Mr. Anant Bajpai, PL

Hon'ble Smt. Justice Rajani Dubey**C.A.V. Order****20.09.2019**

1. Heard on admission.
2. With the consent of both the parties, revision heard finally at motion stage.
3. This revision has been filed by the applicant/accused against the order dated 25.05.2019 passed by Special Judge (Atrocities) Durg, Chhattisgarh, in Special Case No. 2/2019, whereby the learned Special Judge has rejected the application of applicant filed under Section 311 of Cr.P.C. and refused to recall three witnesses.

4. Before the trial Court, the applicant/accused is facing trial under Section 294, 323, 34 of IPC and Section 3(1)(x) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act. During trial, the applicant has filed an application under Section 311 of Cr.P.C. for recalling of three witnesses on the ground that on 05.03.2019, the applicant was not present before the Court, application under Section 317 of Cr.P.C. for exemption from appearance has been filed and the counsel for the applicant sought adjournment, but learned Court below rejected the prayer. Therefore, the applicant filed application under Section 311 of Cr.P.C. for recalling of the witnesses namely Puranik Lal Bande (PW-1), Ajay Kumar Bande (PW-2) and Smt. Arati Bande (PW-3), which was rejected by the trial Court on 25.05.2019. Hence, this revision.

5. Learned counsel for the applicant submits that the impugned order passed by the learned Court is improper, illegal and against the law. Applicant was absent on 05.03.2019 and due to his absence he could not properly assist and instruct his counsel as a result of which counsel could not defend the accused properly and witnesses could not be cross-examined effectively, therefore, the aforesaid witnesses may be recalled for re-examination.

6. Learned counsel for State supported the impugned order.

7. Heard both the counsel for parties and perused the material available on record.

8. A careful perusal of order sheet dated 25.05.2019 would show that on date of examination of witnesses, applicant was not present before the Court. These three witnesses being important, so, their examination cannot be done during absence of the applicant. Their examination can effectively be done only in presence of the applicant. Therefore, in the interest of justice, on

payment of cost of Rs. 5000/- to the Puranik Lal Bande (PW-1), Rs. 5000/- to the Ajay Kumar Bande (PW-2) and Rs. 5000/- to the Smt. Arati Bande (PW-3), it is directed that all three witnesses will be examined on next date of hearing. Let the summons be issued to the three witnesses, cost will be paid to them on their appearance. If the cost is not paid on their appearance, right to cross-examine will stand closed.

9. With the aforesaid observation, criminal revision stands disposed of.

**Sd/-
(Rajani Dubey)
JUDGE**