

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRR No. 999 of 2019**

- Jay Thakur @ Jay Kumar S/o Shri Radheshyam Thakur Aged About 23 Years Occupation - R/o Vyankatesh Talkies, Behind Bajrang Kirana Stores Sanjay Nagar, Supela Police Station - Supela (Bhilai) District - Durg Chhattisgarh., District : Durg, Chhattisgarh

---- Applicant**Versus**

- State Of Chhattisgarh Through S. H. O. Of The Police Station Supela (Bhilai) District - Durg Chattisgarh., District : Durg, Chhattisgarh

----Respondent

For Applicant	: Shri Abhishek Saraf, Advocate
For Respondent/State	: Ms. Akshara Amit, P.L.

Hon'ble Smt. Justice Rajani Dubey**Order On Board****13.9.2019**

1. Heard on admission.
2. This revision is directed against the order dated 11.7.2019, passed by the Fifth Additional District/Sessions Judge Durg, District Durg(CG) in Spl. S.T. No.68/2017 wherein the application under Section 311 of the Cr.P.C. filed by the applicant has been rejected and refused to recall the witness(prosecutrix).
3. Learned counsel for the applicant would submit that the prosecutrix could not be examined effectively, therefore, the aforesaid witness may be recalled for examination. The prosecutrix(PW1) has been examined on 20.6.2018. On that day certain relevant documents

could not be filed in record and that is why effective cross-examination could not be done. The applicant has filed love letters handwritten by the prosecutrix (PW1) and their marriage certificate, therefore, it is necessary to recall the prosecutrix in the interest of justice.

4. On the other hand, learned counsel for the State opposes the prayer of the applicant. He submits that mere incompetence or change of counsel cannot be a ground to recall the witness. She placed reliance on **State (NCT of Delhi) Vs. Shiv Kumar Yadav & Anr., (2016) 2 SCC 402.**
5. Taking into consideration the facts of the case, it is clear from the documents filed by the applicant that the prosecutrix and the applicant have performed marriage on 10.3.2017. The prosecutrix (PW1) has admitted in her cross examination para 8 that she has married to the applicant on 10.3.2017 in Nagpur. The Hon'ble Apex Court in **2013 AIR SC Weekly, 4179, Raja Ram Prasad Yadav Vs. State of Bihar** has laid down the principles of Section 311 Cr.P.C. in para 23 with respect to the power of the Court to summon, recall or re-examine any person and this Court also reiterated the same principle in the order dated 10/10/2017 passed in **CRR No. 946/2017 (Shakeel Khan Vs. State of Chhattisgarh).**
6. Consequently, looking to the stage of trial, order dated 11.7.2019 is set aside. The application of the applicant to recall the witness (prosecutrix) is allowed. The prosecutrix is an important witness and her examination could not be done related to the certain

documents, therefore, on payment of cost of Rs.5000/- to the prosecutrix, it is directed that she will be examined before the trial Court on the date to be fixed by the trial Court.

7. Let summon be issued to the prosecutrix(PW1). Cost will be paid to her before examination. If the cost is not paid on her appearance, right to cross-examine shall stand closed.
8. With the aforesaid observation, the revision is disposed of at the motion stage.

Sd/

(Rajani Dubey)

JUDGE