

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CR.R. No. 1018 of 2019

Darshan Kumar Sarvaiya, S/o. Suresh Sarvaiya, Aged About 22 Years, R/o. Purana Rawan Bhata, Ward No. 16, Police Station Mahasamund, District- Mahasamund, Chhattisgarh.

---- Petitioner

Versus

State of Chhattisgarh, Through : Station House Officer, Police Station Chhura, Civil and Revenue District- Gariyaband, Chhattisgarh.

-----Respondent

For Petitioner	: Mr. A.D. Kuldeep, Advocate
For Respondent/State	: Mr. Kapil Maini, P.L.

Hon'ble Shri Justice Rajendra Chandra Singh Samant

Order On Board

06/11/2019

1. The petitioner aggrieved by the order dated 30.07.2019, passed by the trial Court rejecting the application of the petitioner filed under Section 311 of Cr.P.C.
2. The petitioner had filed an application under Section 311 of Cr.P.C. praying for cross-examination of the prosecutrix with respect to the statement made by her about her date of birth, stating that no question was put to her regarding her date of birth in her cross-examination in defence.
3. The trial Court has mentioned the reasons that the petitioner was taking time in engaging different counsels and if the application would be allowed then the proceeding will go on for infinite time and did not find any reason to allow the application.
4. It is submitted by the counsel for the petitioner that the petitioner/accused has valuable right of his defence, which is also permitted under Section 243 of Cr.P.C.. The dismissal of his

application is arbitrary, therefore, the opportunity be given to the petitioner for cross-examining the prosecutrix on the point of her date of birth.

5. On perusal of certified copy of the deposition of the prosecutrix (P.W.-1), it is found that she has made statement in examination-in-chief that at the time of incident, she was of age 17 years and her date of birth is 5th May, 1999.
6. On perusing the cross-examination part of the deposition of the prosecutrix, it is found that no question has been put to her by the defence counsel with regard to her date of birth. Although there was suggestion that she was of age above 18 years, which is denied by her. Therefore, since the petitioner wants an opportunity to contradict the statement regarding date of birth of the prosecutrix, hence, only to this extent application may have been allowed and which should be allowed. Therefore, finding that the order passed by the trial Court is erroneous, I feel inclined to allow this petition.
7. Accordingly, the petition is allowed. The impugned order is set-aside. The application of the petitioner under Section 311 of Cr.P.C. is allowed to this extent that he shall be permitted to cross-examine the prosecutrix only regarding her statement made about her date of birth. It is further made clear that the trial Court shall not permit any other question to be put to the prosecutrix in this cross-examination apart from the question, which has been permitted in this order.
8. Accordingly, the petition is disposed off.

Sd/-
(Rajendra Chandra Singh Samant)
Judge