

NAFR**HIGH COURT OF CHHATTISGARH, BILASPUR****CRR No. 1197 of 2019**

- Liladhar Patel son of Dileshwar Patel, aged about 22 years, R/o village Chainpur, Police Station Kartala, Taluka Kartala, District Korba (C.G.)

----Petitioner**Versus**

- State of Chhattisgarh Through : The Police Station Chhal, Taluka Udaipur (Dharamjaigarh), District Raigarh (C.G.)

---- Respondent

For Petitioner	:	Ms. Madhunisha Singh, Adv.
For Respondent/State	:	Shri Akhtar Hussain, P.L.

Hon'ble Smt. Justice Rajani Dubey**Order on Board****30/09/2019**

01. With the consent of the parties, the matter is heard finally at the motion state.

02. This revision has been filed against the order dated 28.08.2019 passed by the learned Special Judge (Atrocities), Raigarh, in Special Criminal Case No.24/2008, whereby the learned Special Judge has rejected the application filed under Section 311 of Cr.P.C. by the applicant for recalling and re-examination of the prosecutrix.

03. Brief facts of the case are that the accused/applicant is facing trial before Special Judge under Special Act. The

petitioner had filed an application under Section 311 CrPC before the learned trial Court for recalling and re-examination of the prosecutrix, but the learned trial Court by the impugned order dated 28.08.2019 has rejected the application. Hence this revision by the petitioner.

04. Learned counsel for the petitioner submits that the impugned order of the learned trial Court is arbitrary and illegal which denied the opportunity to defend oneself and the same is not sustainable even for a moment. He further submits that the learned trial Court has failed to appreciate the fact that no injustice would be caused to the prosecutrix. True facts would only come out more clearly before the trial Court by allowing the application. He also submits that the learned trial Court failed to appreciate that allowing the application was essential for just and proper adjudication of the matter. The ultimate objective of power conferred under Section 311 CrPC is that truth must come before the trial Court and the application filed by the applicant would have only facilitated the Court eliciting the truth. Thus, the impugned order being contrary to law may be set aside.

05. On the other hand, learned State counsel supported the impugned order passed by the trial Court.

06. I have heard learned counsel for the parties and perused the record.

07. The record goes to show that the accused/applicant filed certified copy of deposition of the prosecutrix which clearly

shows that on 13.03.2019 the prosecutrix appeared before the trial Court and gave her statement. The accused was not present before the trial Court on the date of her deposition and she identified the petitioner through video conferencing. The learned trial Court, in its detailed order, appreciated this fact. Bare perusal of the deposition of the prosecutrix goes to show that, in para 7 of the statement of the prosecutrix, she denied the suggestion of defence counsel that she is seeing the accused on screen for the first time today. Further, in para 7, she admits that she has seen the accused person two or three times. The application under [section 311](#) of Cr.P.C. was filed after examination of most of the material witnesses including prosecutrix. No justifiable reasons have been assigned by the accused/applicant with respect to necessity of the prosecutrix being cross-examined. The learned trial Court, after going through the entire deposition of the prosecutrix, has passed the impugned order, which in the opinion of this Court, does not call for any interference and the same is liable to be dismissed.

08. Accordingly, the instant criminal revision is dismissed at the motion stage itself.

Sd/-

(Rajani Dubey)
JUDGE