

HIGH COURT OF CHHATTISGARH, BILASPUR

CRR No. 1486 of 2019

- Surendra Kumar Patre, S/o Idal Lal Patre, aged about 33 Years, R/o Gobripath, Police-Station- Kota, District-Bilaspur, Chhattisgarh.

---- Petitioner

Versus

- State of Chhattisgarh Through Police-Station, Kota, District-Bilaspur Chhattisgarh.

---- Respondent

For applicant	:	Mr. Rajeev Kumar Dubey, Advocate.
For Respondent/State	:	Mr. Sudeep Verma, Dy. Govt. Advocate.

Hon'ble Shri Justice Rajendra Chandra Singh Samant
Order On Board

28/11/2019

Heard.

1. Challenge in this revision petition is to the correctness, propriety and legality of the order dated 27.7.2019 passed by the Court of learned Additional Sessions Judge (FTC), Bilaspur in S.T. No.12/2019.
2. It is submitted that on the application filed by the applicant under Section 311 CrPC, the witnesses i.e. the prosecutrix and her mother were summoned on the date of hearing i.e. 27.7.2019, for cross-examination. However, due to some personal difficulties, the counsel appearing on behalf of the applicant could not give his appearance, therefore, an adjournment was sought for, but the learned Court below rejected the prayer for adjournment and asked the applicant himself to cross-examine the witnesses, but he showed his inability and therefore the learned Court below has closed their examination. Hence, it is prayed that applicant be afforded proper opportunity to cross-examine

the witnesses, who were called, and also proper opportunity to defend himself.

3. Learned State counsel opposes the submissions made and submits that there is no error in the impugned order warranting interference in exercise of revisional jurisdiction by this Court. The applicant was already provided with opportunity which he failed to avail.
4. I have heard both the parties and documents on record.
5. On perusal of the impugned order, it is found that the reason recorded by the Court below for non-appearance of the counsel for the applicant was due to ill health. Even then the trial Court has not adjourned the hearing and closed the opportunity of the applicant by asking him to cross-examine the witnesses himself.
6. On due consideration, it is found that it was not the case where the appearance of the counsel representing the applicant was deliberate and was for the purpose of delaying the trial of the case. The applicant himself is in custody and it cannot be expected from him to defend himself as a Legal Practitioner will defend in the legal charges against him. Therefore, closing of opportunity of the applicant when the possibility of cross-examining the witnesses was not totally lost would amount to denial of proper opportunity to the applicant in the matter of his defence. Therefore, the impugned order passed is against the intention of law and the principle of fair trial. Hence, I feel inclined to allow this petition at the motion stage itself.
7. Accordingly, the petition is allowed. The impugned order is set aside. The trial Court is directed to summon the same witnesses again for their cross-examination by the counsel for applicant on the next date of hearing.

Sd/-

(Rajendra Chandra Singh Samant)
Judge