

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CR.R. No. 1535 of 2019

Basant Thakur, S/o. Late Jayant Thakur, Aged About 23 Years, R/o. Hat Padmoor, P.S. Parpa, District Bastar Chhattisgarh.

---- Applicant

Versus

State Of Chhattisgarh, Through : P.S. Ajak Jagdalpur, District Bastar Chhattisgarh.

-----Respondent

For Applicant : Mr. Vikash A. Shrivastava, Advocate

For Respondent : Mr. C.B. Kesharwani, Advocate

Hon'ble Shri Justice Rajendra Chandra Singh Samant

Order On Board

06/12/2019

1. This revision petition has been brought being aggrieved by the order passed by the Special Judge (Atrocities), Bastar at Jagdalpur in Special Sessions Trial No. 05/201,9 by which the application filed by the prosecution under Section 311 of Cr.P.C. was allowed for re-examination of the prosecutrix and Investigation Officer.
2. It is submitted that an application under Section 311 of Cr.P.C. has been filed by the prosecution at the stage, when the case was ripe for judgment and disposal. No explanation has been given regarding the delay in filing that application, whereas, the documents, which are sought to be exhibited were always present

with the prosecution. Therefore, allowing this application by the trial Court is arbitrary, erroneous and against the provisions of law. Petition be allowed and the relief be granted.

3. State counsel opposes the petition and the submission made in this respect. It is submitted that the documents proposed to be exhibited by the prosecution are essential for disposal of the case and there is no restriction under the provision of Section 311 of Cr.P.C. for filing application for examination of the additional witness or re-examination of any witness at any stage, therefore, the order has been correctly passed and there is no infirmity.
4. I have heard the learned counsel for the parties and perused the documents placed on record.
5. The prosecution had filed an application under Section 311 of Cr.P.C. praying that the originals of the mark-sheet of the prosecutrix obtained from the school and the caste certificate, which was not earlier produced are being produced by the prosecution and on that basis, prayer was made for examination of the prosecutrix as well as investigation officer for exhibiting these documents, which has been allowed.
6. After considering on the objection raised by the counsel for the petitioner, I am of this view that there is no specific stage for brining an application under Section 311 of Cr.P.C.. It is for the Court to decide whether the examination or re-examination of such witness is essential for the just decision of the case. In this case, the applicant is facing trial for offence under the provision of Protection

of Children from Sexual Offences Act and as well as Scheduled Caste & Scheduled Tribes (Prevention of Atrocities) Act, therefore, the documents with respect to the age proof and caste proof are essential for just decision of the case. Hence, the prosecution must have opportunity for bringing the documents in evidence.

7. The applicant has placed reliance on the judgment of Supreme Court in ***Ratanlal Vs. Prahlad Jat & Others***, reported in **(2017) 9 SCC 340**.
8. The Supreme Court has in Ratanlal case (supra) held that recall of the witness already examined is not a matter of course and discretion given to Court in this regard has to be exercised judicially to prevent failure of justice. This principle have been followed and for the reason that the applicant is specifically facing charges under the Specific Acts, therefore, the learned Special Court has not committed any error in allowing the application under Section 311 of Cr.P.C.
9. Accordingly, this petition is without any substance, which is dismissed at motion stage itself.

Sd/-
(Rajendra Chandra Singh Samant)
Judge