

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRR No. 259 of 2020

Tulsiram Patel, S/o. Chhedilal Patel aged about 50 years, R/o. Village Amora, P.S. Jarhagaon, District Mungeli, Chhattisgarh.

---- Applicant

Versus

State Of Chhattisgarh through the Station House Officer, Police Station Masturi, District Bilaspur, Chhattisgarh.

---- Respondent

For Applicant	: Shri Anish Tiwari, Advocate.
For Respondent/ State	: Shri Sudhir Sahu, P.L.

Hon'ble Shri Justice Rajendra Chandra Singh Samant

Order on Board

28-02-2020

Heard.

1. This revision petition has been brought challenging the order dated 3.2.2020 passed by the Learned Additional Sessions Judge, 2nd Fast Track Special Court, Bilaspur, District Bilaspur, Chhattisgarh, dismissing the application filed by the applicant.
2. It is submitted by counsel for the applicant that on 27.1.2020, the deposition of the prosecutrix and her father were recorded by the trial Court in camera proceeding. During the examination of these witnesses, the applicant was not present before the witnesses. It is further submitted that the applicant and the co-accused were sent out of the retiring room of the Judge and the doors were closed, because of which, the applicant and the co-accused were unable to hear the statement that was given by the witnesses. On this ground, it is prayed that the valuable right of the applicant and the co-accused have been

denied by the trial Court.

3. The application was filed making a prayer that the proceeding dated 27.1.2020 be cancelled. It is also submitted that there is a specific provision under Section 36 of the Protection of Children from Sexual Offences Act, 2012 that the Court has to ensure that the accused should in a position to hear the statement of the child victim and communicate with his advocate. Learned trial Court did not do anything to ensure this mandate of the provision, therefore, the impugned order by which the objection raised by the applicant has been dismissed is erroneous and the interference by this Court is prayed for.
4. Learned State counsel opposes the submissions made in this respect. It is submitted that Section 36 of the POCSO Act, clearly provides that a child witness shall not be exposed to the accused at the time of recording of evidence and that has been taken care of by the trial Court. It is also submitted that the applicant is now making a pretext that he has not heard the statement by the witnesses. Hence, this revision petition be dismissed.
5. Heard counsel for both the parties and perused the documents present on record.
6. On perusal of the documents filed alongwith the petition, it is found that the order sheet dated 27.1.2020 does not mention about the camera proceeding but there is a notice in this respect in the deposition of the prosecutrix. On deciding the objection raised by the applicant in the impugned order, learned Court below has stated that about the camera proceeding the applicant did not raise any objection at the time the statements were recorded that the applicant was unable to hear the same, therefore, it is held that the objection raised is after thought and the application was dismissed.

7. The objection that has been mainly stated in his application is that he was sent out of the room and the doors were closed, therefore, he was unable to hear the statement given. This objection has not been answered in the impugned order.
8. The trial Court had to reply and counter this objection by giving details of the camera proceeding mentioning the place where the witnesses stand, the place where the accused persons stand and hear the statement recorded. The description was also not given regarding the current arrangement present with respect to camera proceeding and regarding the procedure to be followed and the procedure laid down under Section 36 of the POCSO Act in the impugned order. Therefore, I am of this view that the order passed by the Court below is not at all elaborate and complete to make out on the basis of the present impugned order, whether the Court below has necessary paraphernalia and arrangements to ensure that the provision under Section 36 of the POCSO Act has been complied with. Therefore, only for these reasons it is held that the order passed by the Court below is not a proper order with complete details, therefore, the same is set aside. The application raising objection filed by the applicant is restored and the learned Court below is directed to reconsider on the application and pass fresh order with all the necessary details as it has been observed in this order after affording opportunity of hearing to both sides.
9. Accordingly, this petition stands disposed off.

Sd/-
(Rajendra Chandra Singh Samant)
Judge