

HIGH COURT OF CHHATTISGARH, BILASPUR

CRR No. 46 of 2021

- Som Kumar Sahu @ Shiva Sahu, S/o Chhotelal Sahu, Aged About 20 Years, R/o Vill.- Hathnewra, P.S. Champa, District-Janjgir-Champa, Chhattisgarh

---- Applicant

Versus

- State of Chhattisgarh Through- S.H.O., P.S. Champa, Distt.-Janjgir-Champa, Chhattisgarh

---- Respondent

For Applicant : Mr. Ravindra Sharma, Advocates.

For Respondent/State : Mr. B.P. Banjare, Dy. Govt. Advocate.

Hon'ble Shri Justice Rajendra Chandra Singh Samant

Order On Board

01/02/2021

Heard.

1. This revision petition has been brought being aggrieved by the order dated 11.01.2021 passed by the learned Special Judge, POCSO Act, Janjgir, District-Janjgir-Champa, Chhattisgarh, in Special Session Case No.32/2020 dismissing the application filed by the applicant under Section 311 of CrPC.
2. Learned counsel for the applicant submits that the applicant was earlier represented by Mr. GK Guljar, Advocate, who was not the counsel appointed by him. The counsel, who is favored by the applicant, was not available during the lock-down period, then another counsel Mr. Laxmi Banjare giving assurances of defence of the applicant got engaged himself, but instead of appearing himself has engaged another counsel for the defence of this applicant. The applicant/accused has a good defence which has not been projected in the cross examination that was made by the counsel, who has earlier cross-examined the prosecutrix. Hence, the right to proper defence of the applicant should not be allowed to suffer, he may be granted

opportunity to recross-examine the prosecutrix through his favored counsel.

Reliance has been placed on the judgment of Supreme Court in Mannan SK and Ors. v. State of West Bengal and another, reported in AIR 2014 SC 2950, in which, the Supreme Court has held that a witness can be recalled if it appears to the Court that his evidence is essential for just decision of the case.

3. Learned State counsel opposes the petition and submissions made in this respect. It is submitted that on perusal of the deposition itself it would be seen that the applicant/accused had full opportunity to cross-examine the prosecutrix. Further, the statement in the application and the submissions before this Court are clearly vague without specifying any specific point on which the question could not be put to the prosecutrix for which her recross-examination may be considered as necessary, hence, the learned trial Court has not committed any error in passing the impugned order, therefore, the revision petition be dismissed.
4. I have heard both the parties and perused the documents on record.
5. Considered on the submissions. After perusal of the copy of the deposition of the prosecutrix and the impugned order, I am of this view that the applicant/accused had full opportunity to cross-examine the prosecutrix and he has availed the same. It is settled principle that a witness cannot be recalled to fill-up lacunas in the case of prosecution or defence. The judgment of Supreme Court in Mannan Sk and Ors. (supra) is not of any guidance in the present case. The statement in the application regarding additional defence of the applicant can still be brought in the trial through the examination or cross-examination of the other witnesses which are yet to be examined, therefore, I am of this view that no error has been committed by the learned trial Court and the impugned order is not assailable. Hence, the revision petition is dismissed.

Sd/-

(Rajendra Chandra Singh Samant)

Judge

