

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRR No. 67 of 2021

- Farukh Rangrej S/o Munna Rangrej, Aged About 24 Years, R/o Santra Badi, Ward No. 26, Behind Bunkar Sangh, Police Station Mohan Nagar, District Durg Chhattisgarh., District : Durg, Chhattisgarh

---- Applicant

Versus

- State Of Chhattisgarh Through Station House Officer, Police Station Durg, District Durg Chhattisgarh., District : Durg, Chhattisgarh

----Non-applicant

For Applicant – Shri Kishore Narayan, Advocate.

For Non-applicant/State – Shri Adil Minhaj, Govt. Advocate.

Hon'ble Shri Justice Rajendra Chandra Singh Samant

Order on Board

11-02-2021

1. This revision petition has been brought against the order dated 24-11-2020 passed by learned Additional District & Sessions Judge, Second Fast Track Special Court, POCSO Court, District Durg, Chhattisgarh dismissing the application filed by the applicant under Section 311 of the Cr.P.C.

2. It is submitted by learned counsel for the applicant that while examining the prosecutrix (PW-2) and her father (PW-3) the applicant was not represented by any counsel. The cross-examination has been made by the applicant himself. The applicant is not a person having legal knowledge, therefore, he could not cross-examine these witnesses at length on all points of his defence. Therefore, an application was moved under Section 311 of the Cr.P.C. praying for recall of these witnesses and one another namely Khushi Ghotekar to afford opportunity to the applicant for cross-examining them, which has been erroneously dismissed by the impugned order. The applicant is not pressing on his prayer in the application for cross-examining another witness Khushi Ghotekar, only prayer is this, that he may be granted opportunity to cross-examine the witnesses PW-2 and PW-3, namely, the prosecutrix and her father. Therefore, it is prayed that the impugned order be set aside and

opportunity of cross-examination be granted to the applicant.

3. Learned counsel for the State/non-applicant opposes the submission made and submits that according to the order sheets of the case, it is clearly visible that the applicant side had deliberately put off the cross-examination of the witnesses. On the date of hearing 07-01-2020 the prosecutrix and her father were present, the counsel for the applicant sought adjournment. On another date 08-01-2020 the counsel was engaged who cross-examined the another witness present on that date. The prosecutrix and her father were both present on 26-02-2020 again but the applicant side again made a prayer that they want to change their counsel, therefore, the case be adjourned, but the learned trial Court giving reference of Section 35 of POCSO Act examined the prosecutrix and her father, in which opportunity to cross-examine was given to the applicant. The conduct of the applicant had been similar in the other dates of hearing also. Learned Sessions Judge has made mention of the previous conduct of the applicant in the impugned order and it is on that basis the application under Section 311 of the Cr.P.C. has been rejected. Therefore, no error has been committed by the trial Court in passing the impugned order. Hence, the revision petition may be dismissed.

4. Considered on the submissions. On perusal of the copy of the deposition of the prosecutrix and her father it is clear that the applicant was not represented by any counsel and cross-examination that has been made by the applicant himself appears to be formal. Section 303 of the Cr.P.C. provides that any person accused of an offence before a Criminal Court, has a right to be defended by a pleader of his choice. In this case the applicant is not making any prayer to provide any lawyer from legal aid. Section 137 of the Evidence Act provides that on appearance of a witness first there shall be examination-in-chief and then adverse party shall be called for cross-examination. Further, re-examination may be permitted by the person calling such witness. Any

deposition of a witness cannot be complete unless there is examination-in-chief and cross-examination made by the adverse party. Granting opportunity of defence to an accused can never be regarded as a mere formality. The conduct of the applicant in this case may be a cause of inconvenience to the court proceeding, but even then this fact cannot be ignored that the witnesses mentioned hereinabove have not been cross-examined by any legal practitioner and the applicant is making prayer to cross-examine these witnesses by the counsel who has been now appointed by him and who is representing him in the trial. Therefore, there appears to be a denial in the opportunity of defence of the applicant. Hence, the impugned order cannot be held to be sustainable. Accordingly, the revision petition is allowed and the impugned order is set aside. Learned trial Court is directed to give opportunity to the applicant for his proper defence by affording him opportunity to cross-examine the witnesses namely, the prosecutrix and her father in accordance with law through the counsel appointed by him. This proceeding be completed by the trial Court within a period of two months.

Sd/-

(Rajendra Chandra Singh Samant)
Judge