

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRR No. 174 of 2021

- Yash @ Yogesh Manikpuri, S/o Mahendra Manikpuri (wrongly mentioned as Manikpur), Aged About 19 Years, R/o Jagmal Chowk, Sendri Ice Factory Korba, District Korba District Korba Chhattisgarh

---- Applicant

Versus

- State Of Chhattisgarh Through: Police Station - Kotwali, District Korba Chhattisgarh

----Respondent

For Applicant – Ms. Ashwini Amin, Advocate.

For State/Respondent – Mr. Adil Minhaj, Govt. Advocate.

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

19-03-2021

Heard.

1. This criminal revision has been brought challenging the correctness, propriety and legality of the order dated 04-02-2021 passed in Special Criminal (POCSO) Case No.32/2019 by the Additional Sessions Judge (F.T.C.)/Special Court (POCSO)/Child Court, District Korba, which has dismissed the application under Section 311 of the Cr.P.C. filed by the applicant.
2. It is submitted by learned counsel for the applicant that the impugned order is erroneous and illegal. The prayer of the applicant was totally bonafide as the very important and relevant questions were not put to the witnesses, namely, Ganeshibai (PW-1), Pradeep Sagar (PW-2), the prosecutrix (PW-4) and Karmabai (PW-7). The applicant who is facing the trial has right to defence and for the sake of fair trial the application should have been allowed by the trial Court. Hence, it is prayed that this petition be allowed and the relief be granted to the petitioner.
3. Learned counsel for the State/respondent opposes the submission made by learned counsel for the applicant and submits that in the case of **Sethuraman Vs. Rajamanickam**, (2009) 5 SCC. 153 it has been held that the

order on application under Section 311 of the Cr.P.C. is an order of interlocutory nature, therefore, the revision of interlocutory order being barred under Section 397(2) of the Cr.P.C. this petition is not maintainable. It is further submitted that on perusal of the copy of the deposition of the witnesses whose recross-examination is sought by the applicant, it is clear that the applicant's counsel has had ample opportunity to cross-examine these witnesses and the application filed is only a dilatory tactic to prolong the trial. Therefore, the revision petition is without any substance, which may be dismissed.

4. Considered on the submissions.

5. On perusal of the copy of the statement of Ganeshibai (PW-1), Pradeep Sagar (PW-2), the prosecutrix (PW-4) and Karmabai (PW-7), it is apparent that these witnesses have been cross-examined by the counsel for the applicant. The reason given for recross-examination is this, that the applicant has changed the counsel in between the trial. Further, the reason for recross-examination given is this that some essential questions are necessary to be put to the witnesses with respect to the police statement, written complaint, FIR and the medical examination of the prosecutrix. The reason given is vague. The applicant had all the opportunity for cross-examination of the witnesses through earlier counsel, therefore, only on the basis of some vague statement that he should be given opportunity for cross-examination again the application was not fit to be entertained. Although the order under Section 311 of the Cr.P.C. is not revisable being interlocutory order, but any fact of case in such a case can be examined under Section 482 of the Cr.P.C. as it has been stated by Hon'ble the Supreme Court in case of **Prabhu Chawla v. State of Rajasthan**, (2016) 16 SCC 30 : AIR 2016 SC 4245. Accordingly, this petition is not fit to be entertained for any reason. Hence, it is dismissed at motion stage.

Sd/-
(**Rajendra Chandra Singh Samant**)
Judge