

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRR No. 154 of 2021

Bhoku @ Om Prakash Yadav, S/o Nandan Yadav, Aged About 23 Years, R/o Village Kheli, Police Station Patan, District- Durg (C.G.)

--- Applicant

Versus

State of Chhattisgarh, Through S.H.O. Police Station Patan, District- Durg (C.G.)

--- Respondent

For Applicant : Mr. B.P. Singh, Advocate.

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

Hon'ble Shri Justice Rajendra Chandra Singh Samant

Order on Board

05/03/2021

1. The matter is heard finally at motion stage.
2. This revision petition has been preferred against order dated 16.02.2021 passed by the learned First Fast Track Special Judge (POCSO Act), Durg, District- Durg (C.G.) in Special Session Trial No. 24/2018, dismissing the application of the applicant filed under Section 311 of the Cr.P.C.
3. It is submitted by learned counsel for the applicant that the applicant is facing trial in the case mentioned hereinabove. The witnesses namely Vijay Kumar Sahu (PW-3)- father of the prosecutrix and the Investigating Officer namely Anamika Jain Shrivastava (PW-10), were earlier examined and cross-examined in the Court, but some important and relevant questions, could not put to them by the counsel because of which, the application under Section 311 of the Cr.P.C., was filed

praying for opportunity to recross-examine these witnesses. The learned trial court has without giving proper consideration, passed the erroneous order. The applicant's rights of defence is getting prejudiced because of the impugned order. Therefore, it is prayed that this revision petition be allowed and the applicant be granted liberty to recross-examine the witnesses named in this application.

4. Reliance has been placed on the judgment of the Supreme Court in **Manju Devi Vs. State of Rajasthan**, reported in **(2019) 6 SCC 2013** and **Swapan Kumar Chatterji Vs. Central Bureau of Investigation**, reported in **(2019) 14 SCC 328**.
5. Learned State counsel opposes the submissions and submits that the witness Vijay Kumar Sahu (PW-3) was examined on 24.06.2019 and the Investigating Officer- Anamika Jain Shrivastava (PW-10) was examined on 06.03.2020. It was after long delay, the application for recross-examination under Section 311 of the Cr.P.C., has been filed by the applicant on 11.02.2021, therefore, the application filed is only for the purpose to delay the trial and the trial is at the stage of its conclusion. The questions proposed in the application, are not relevant and further the applicant already had the full opportunity to cross-examine the witnesses Vijay Kumar Sahu (PW-3) and Investigating Officer- Anamika Jain Shrivastava (PW-10)
6. Heard learned counsel for the parties.
7. Considered on the submissions. On perusal of copy of the statement of Vijay Kumar Sahu (PW-3) and Anamika Jain

Shrivastava (PW-10), it is seen that both the witnesses have been cross-examined at length by counsel for the applicant. On perusal of the copy of the application under Section 311 of the Cr.P.C., it is seen that the questions that the applicant side wants to put to the witnesses, is only for testing veracity of the witnesses regarding which, the applicant already had that opportunity and such similar other questions has already been put to the witnesses. In the referred judgment of the Supreme Court in **Mohanlal Shamji Soni Vs. Union of India & another**, reported in **1991 Supp. (1) SCC 271**, it was held that the power under Section 311 of the Cr.P.C. cannot be used for filling up the lacuna left by the prosecution or by the defence.

8. In the case of **Manju Devi (Supra)**, prayer was made for examining doctor, who had conducted first postmortem of dead body of the deceased for the reason that he was not summoned by the prosecution in the trial. Similarly, in the case of **Swapan Kumar Chatterji (Supra)**, the issue had been non-examination of the material witnesses. These case laws do not speak of any guidelines for re-cross-examination of the witnesses and for recall for such witnesses under Section 311 of the Cr.P.C. Hence, this revision petition is without any substance, which is liable to be dismissed.
9. In view of the above, the instant revision petition is dismissed at motion stage itself.

Sd/-
(Rajendra Chandra Singh Samant)
Judge