

HIGH COURT OF CHHATTISGARH, BILASPUR

CRR No. 372 of 2020

- Saket Sharma, S/o Shri Hiramani Sharma, Aged About 31 Years, R/o Gokulpur Ward, Near Laxmi Niwas, Dhamtari, District-Dhamtari Chhattisgarh.

---- Applicant

Versus

- State of Chhattisgarh Through Mahila Police Station Ajak, Iucaw, Kanker, District-Kanker, Chhattisgarh.

---- Respondent

For Applicant	:	Mr. B.P. Sharma with Mr. M.L. Saket & Mr.Vaibhav Mishra, Advocates.
For Respondent/State	:	Mr. D.P. Singh, Dy. Adv. General.

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 11.02.2020 passed by the Court of learned Special Judge, SC/ST (Prevention of atrocities Act) Kanker, dismissing the application of the applicant filed under Section 311 of CrPC.
2. It is submitted by the counsel for applicant that the prosecutrix in this case has been examined in the Court on 15/16.5.2019, but inadvertently some documents which are relevant in the case could not be confronted with her. The prosecutrix has taken benefit of caste which is not recognized as an SC in the State of Chhattisgarh, therefore, relevant questions have to be put to the prosecutrix on this point. The applicant has obtained some documents under the RTI Act on later date, which are necessary for his defence. Apart from that, a compromise has taken place between the applicant and the prosecutrix, therefore, it is necessary to put question to the prosecutrix for making statement on such compromise. Reliance has been placed on the judgment of Maheshwar Tigga v. State of Jharkhand, reported in

(2020) 10 SCC 108.

3. It is further submitted that in the case of *Natasha Singh v. Central Bureau of Investigation* reported in (2013) 5 SCC 741 it was held that the power under Section 311 CrPC is discretionary and it should be exercised judicially and not arbitrarily. It has been similarly held in the case of *Rajaram Prasad Yadav v. State of Bihar* and another reported in (2013) 14 SCC 461. Hence, the impugned order has curtailed the right of defence of the applicant which is not sustainable. Prayer has been made to allow the revision petition.
4. Learned State counsel opposes the petition and submissions made in this respect. It is submitted that the prosecutrix has been examined and cross-examined in totality. It is submitted that the applicant has influenced the prosecutrix to enter into a compromise and it is because of this development, the applicant intends to bring favorable statement in the deposition statement of prosecutrix. Such development of filling of lacuna cannot be permitted by the exercise of power under Section 311 of CrPC. Hence, the revision petition is without any substance which may be dismissed.
5. In reply, it is submitted that the confrontation of the prosecutrix with the documents which have been obtained by the applicant later on is necessary, therefore, the permission to recross-examination of the prosecutrix may be granted.
6. I have heard both the parties and perused the documents on record.
7. Considered on the submissions. On perusal of the copy of the deposition of prosecutrix, it is found that her examination started on 3.4.2019, which continued on 4.4.2019. As her examination could not be completed on these days, the prosecutrix was recalled and her cross-examination was completed on 15.5.2019 & 16.5.2019, therefore, the applicant has availed the opportunity of cross-examination of the prosecutrix in detail. The documents on which the applicant is relying and seeking permission to confront with the prosecutrix, appear to have been received by him on 21.1.2019 as is reflected from the signature with date of the Public Information Officer. Some documents are obtained prior to that date, therefore, he had

opportunity to cross-examine the prosecutrix these on the basis of documents which were available on the date when she was examined and cross examined. The compromise regarding which the submission has been made, is not relevant for recall of witness for the simple reason that the offences for which the applicant is being tried are not compoundable. Hence, submission of the State counsel that the applicant wants to reap benefits of the compromise for bringing favorable statement in her deposition does not appear to be altogether baseless. It has been held in the case of Natasha Singh(supra) that the power under Section 311 CrPC is to be exercised judicial and not arbitrarily, and the same fairly applies to this case. It is found that no error has been committed in passing of the impugned order. The applicant had full and complete opportunity to cross-examine the prosecutrix which he has availed, therefore, there is no further need to allow recalling of the prosecutrix for recross-examination, hence, for these reasons I am of view that this revision petition is not fit to be allowed, which is dismissed accordingly.

Sd/-

(Rajendra Chandra Singh Samant)

Judge