

HIGH COURT OF CHHATTISGARH, BILASPUR

CRR No. 249 of 2021

- A B C (Description of prosecutrix submitted in closed envelop)

---- Applicant

Versus

1. Nimish Agrawal S/o Sunil Agrawal Aged About 38 Years R/o 1/45 Nehru Nagar, Old Supela, Police Station Supela, Bhilai, DisitRICT Durg Chhattisgarh, District : Durg, Chhattisgarh
2. Sunil Agrawal S/o Late Lami Narayan Agrawal Aged About 65 Years R/o 1/45 Nehru Nagar, Old Supela, Police Station Supela, Bhilai, DisitRICT Durg Chhattisgarh
3. Smt. Rekha Agrawal W/o Sunil Agrawal Aged About 62 Years R/o 1/45 Nehru Nagar, Old Supela, Police Station Supela, Bhilai, DisitRICT Durg Chhattisgarh
4. Neha Agrawal W/o Udit Narayan Aged About 40 Years R/o Flat No. 1503, Oberay Wood Goregaon, East Mumbai Maharastra
5. State Of Chhattisgarh Through The Station House Officer, Police Station Supela, DisitRICT Durg Chhattisgarh

---- Respondents

For the Applicant	:	Mr. T.K. Jha Advocate.
For the State	:	Mr. Anand Verma, GA.
For the respondent No. 1,2 and 4.	:	Mr. Manoj Paranjpe, Advocate
For the respondent No.3	:	Mr. Anil Pillai, Advocate

Hon'ble Shri Justice Gautam Chourdiya

Order On Board

22/11/2021

1. This criminal revision is filed under Section 397 /401 of Code of Criminal Procedure, 1973 challenging the order dated 12.03.2021 passed by Additional Sessions Judge (FTC) Durg (C.G.) in S.T. No. 108/2017 whereby learned trial Court allowed the application of respondents under Section 231(2) CrPC read with section 136 of the Evidence Act.

2) Learned counsel for the appellant submits that the trial Court was not justified in deferring the cross-examination of the prosecutrix and the order impugned runs contrary to the law laid down by the Hon'ble Supreme Court where it has been held that such judicial discretion has to be exercised in consonance with statutory framework and context while being aware of reasonably foreseeable consequences. Further from perusal of the impugned order it is manifestly clear that no reason, much less any specific reason, has been assigned by the trial Court while allowing the application of the respondents under Section 231(2) CrPC read with section 136 of the Evidence Act. Therefore, impugned order is liable to be set aside.

3) On the other hand, learned counsel for the State as well as counsel for respondents No. 1 to 4 supports the impugned order and reliance has been placed on the decision of the Hon'ble Supreme Court in the matter of **State of Kerala v. Rasheed 2019 (13) SCC 297**.

4) I have heard learned counsel for the parties and perused the material available on record.

5) The trial Court while allowing the application under Section 231(2) CrPC read with section 136 of the Evidence Act of the respondents observed that the statement recorded under Section 161 CrPC of the prosecutrix and her father Vijay Agrawal, go to show that their statements relate to the incident and therefore, keeping in view the gravity and nature of the offence, the right of the defence of the accused, deferral of cross examination of the prosecutrix till the examination-in-chief of her father is completed appears to be justified. This Court finds no illegality or perversity in the findings so recorded by the trial Court. No prejudice is likely to be caused to the prosecutrix by deferring her cross examination and already specific date has been given for recording evidence of the witnesses including Vijay Agrawal. In this revision, counsel for the applicant has also prayed for a direction to the trial Court to allow only one advocate for cross-examination of the prosecutrix during in camera

proceeding. The aforesaid prayer can also not be allowed because there are number of accused persons in this case who have engaged their respective counsels for their individual defence.

6) In the result, there is no substance in the present revision, the same is liable to be dismissed and is accordingly dismissed.

Sd/-

(Gautam Chourdiya)

Judge

Santosh