

HIGH COURT OF CHHATTISGARH, BILASPUR

CRR No. 436 of 2020

- Vikash Sahu, S/o Suman Sahu, Aged About 17 Years, R/o Ramnagar Sikola Bhata Durg, District-Durg, Chhattisgarh.

---- Applicant

Versus

- State of Chhattisgarh Through The District Magistrate, Durg Chhattisgarh.

---- Respondent

For Applicant : Mr. Vijay K. Sahu, Advocate.
For Respondent/State : Mr. D.P. Singh, Dy. Adv. General.

Hon'ble Shri Justice Rajendra Chandra Singh Samant

Order On Board

15/02/2021

Heard.

1. This revision petition has been brought being aggrieved by the order dated 6.12.2019 (Annexure A/1) passed by the Court of learned 5th Additional Sessions Judge / Special Court under the POCSO Act, rejecting application of the applicant filed under Section 311 of CrPC praying for recall of the prosecutrix for cross-examination.
2. It is submitted by the counsel for applicant, that on the date of hearing i.e. 26.3.2018 the counsel appointed by the applicant was not present. The learned trial Court instead of passing the order of adjournment insisted upon the applicant to cross-examine the witness, therefore, the applicant put some questions in cross-examination to the witness, but this cross-examination has not served the purpose of defence of the applicant for the reason that he was not represented by any legal practitioner for cross-examining the prosecutrix. Therefore, the application was filed under Section 311 of CrPC, which has been erroneously rejected by the Court below.

3. Learned State counsel opposes the petition and submissions made in this respect. It is submitted that the prosecutrix was examined on 26.3.2018 whereas the application under Section 311 CrPC was filed after inordinate delay of more than one year which has been decided by the impugned order on 6.12.2019. The applicant is intending to prolong the trial, hence, rejection of his application by the impugned order does not call for any interference. The revision petition be dismissed.
4. I have heard both the parties and perused the documents on record.
5. Considered on the submissions. Section 303 of CrPC provides, that any person/accused after offence before a Criminal Court has a right to be defended by a pleader of his choice. Therefore, I am of this view that a right to defence of an accused is not a simple formality. Such right has to be provided to him in accordance with law and also effectively. Therefore, I feel inclined to allow this revision petition.
6. Consequently, revision is allowed. The impugned order is set aside. The application filed by the applicant under Section 311 CrPC is allowed and the learned trial Court is directed to provide one opportunity to the applicant to cross-examine the prosecutrix in the case through his counsel.

Sd/-

(Rajendra Chandra Singh Samant)

Judge