

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Revision No. 482 of 2021**

Rupesh Kumar Sahu, Son of Dukaalha Ram Sahu, aged about 23 years, resident of Ward No.04, Ahiwara, Police Station Nandini Nagar, District Durg, Chhattisgarh

---- Applicant

Versus

State of Chhattisgarh, through the Station House Officer, Police Station-Ahiwara, District Durg, Chhattisgarh.

----Respondent.

For Applicant	:	Mr. Om Prakash Sahu, Advocate.
For Respondent/State	:	Mr. Praveen Shrivastava, Panel Lawyer.

Hon'ble Shri Justice N.K. Chandravanshi**Order On Board****12.08.2021**

- (1) Proceedings of the matter have been taken-up through Video Conferencing.
- (2) This criminal revision has been preferred against the order dated 4.3.2021 passed by Upper Sessions Judge, Second Fast Track Special Court, District Durg in Case No. 148/2020, whereby an application filed by the applicant/accused under Section 311 of the Code of Criminal Procedure, 1973 (henceforth 'the Code') has been dismissed by the trial Court.
- (3) Learned counsel for the applicant submits that victim/prosecutrix has been examined in the trial. She has stated in her examination-in-chief that applicant/accused has committed rape with her, but denied the said fact in her cross-examination. Further on being asked by the Court below, she has stated that it is true that rape committed with her, thereby, she has falsified her earlier statement given in the cross-examination, but in further cross-examination, she has stated that

police told her that whenever she has been asked by the Court about the incident, then she would say that wrong act has been committed with her. From the aforesaid statement of victim/prosecutrix, it is not clear that whether rape was committed with her or not, therefore, it is necessary to call the victim/prosecutrix for her re-examination as the same is required for proper adjudication of the case.

(4) Per contra, learned counsel for the State submits that applicant was afforded full opportunity to cross examine the victim/prosecutrix, therefore, again the applicant can not be permitted for further cross-examination of the victim/prosecutrix just to fill-up the lacuna because all the questions sought to be put to victim/prosecution in the event of her cross-examination have already been asked in the cross-examination held earlier. He further submits that if victim/prosecutrix has made contradictory statement, then the applicant may put his submission while arguing the matter and also challenge the credibility of the witness, therefore, there is no illegality and infirmity in the impugned order and as such, same deserves to be upheld.

(5) I have heard learned counsel for the parties and perused the documents annexed with the case.

(6) Only on the basis of the fact that victim/prosecutrix has given contradictory statement before the court below in her court statement that as to whether rape has been committed by the applicant with her or not, she cannot be recalled for her further cross-examination because if a person makes a contradictory statement about a fact as has been stated by learned counsel for the applicant about the victim/prosecutrix in this case, then on taking his further statement/further cross-examination about the same fact would go against his some earlier statement, as such, fact will remain same / unchanged.

(7) If victim/prosecutrix has made contradictory statement, then credentialty of her statement can be questioned during the course of argument by the applicant/accused, permitting further cross-examination is not a proper recourse.

(8) In the instant case, since applicant has already been afforded full / sufficient

opportunity to cross-examine the victim/prosecutrix, therefore, the reason for which, she has been requested to be recalled for further cross-examination is not just & proper and learned trial Court has not committed any error in dismissing the application filed by the applicant-accused under Section 311 of the Code by the impugned order.

(9) In view of foregoing discussion, the criminal revision, being devoid of substance, is liable to be and is hereby dismissed.

Sd/-

(N.K. Chandravanshi)
Judge

D/-

