

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Proceedings through Video Conferencing****CRIMINAL REVISION No. 414/2021**

Tej Kumar Kispotta, son of Salik Ram, aged about 28 years, Caste Uranw, R/o. Vill. Aamadol, Thana Kapu, Distt. Raigarh (CG)

Applicant**VERSUS**

State of Chhattisgarh, through P.S. Pathalgaon, Distt. Jashpur (CG)

Non-applicant

 For Applicant : Shri Mohit Kumar, Adv.
 For non-applicant/State : Shri Praveen Shrivastava, PL.

Hon'ble Shri Justice N.K. Chandravanshi**Order on Board****8-7-2021**

1. With consent of the counsel for both the parties, the matter is heard finally at motion stage.

2. Challenge in this revision petition is to the order dated 19-3-2021 passed by learned Special Judge, POCSO, Pathalgaon, Distt, Jashpur in S.T. No. 7/2020 whereby the application filed by the applicant under Section 311 of the Code of Criminal Procedure, 1973 (in short 'Cr.P.C.') for re-examination of the prosecutrix before the Special Judge, has been rejected.

3. As per prosecution story, complainant / father of the prosecutrix lodged a report before PS Pathalgaon to the effect that the applicant has taken his daughter with him on the pretext of marriage and committed sexual intercourse with her. Police registered the case against the applicant under Crime No. 206/2020 punishable under Sections 363, 366, and 376(2) of the Indian Penal Code and Sections 4 and 6 of the Protection of Children from Sexual Offences Act, 2012 (in short 'POCSO' Act). After filing

charge sheet, the case is pending before learned Court below as S.T. No. 07/2020.

4. Case of the applicant for this revision is that the prosecutrix in her statement under Section 164 of the Cr.P.C. and also in her examination-in-chief, has stated regarding beating by her mother to her. Her statement before the Court was recorded in presence of her mother and due to fear, she has exaggerated her statement. Therefore, the applicant be permitted to re-examine the prosecutrix (regarding physical relation) in absence of her mother. The application filed by the applicant under Section 311 of the Cr.P.C. has been rejected by the trial Court. Hence, this revision.

5. Learned counsel for the applicant submits that trial Court has committed illegality by rejecting the application under Section 311 of the Cr.P.C. because in the statement of the prosecutrix recorded under Section 164 of the Cr.P.C. and even in her examination-in-chief, she has clearly stated that on 22-9-2020, her mother beat her, therefore, she herself left her house. This fact shows that she has no cordial relation with her mother and she is uncomfortable with her mother. Therefore, it was not proper to record her statement in presence of her mother. He further submits that due to afore-stated reasons, this revision may be allowed and the trial Court be directed to recall and re-examine the prosecutrix.

6. Learned counsel for the State opposing the revision submits that on the request of the prosecutrix, the statement of the prosecutrix was recorded in presence of her mother as provided

under Section 33(4) of the POCSO Act. The trial Court has not committed any illegality in passing the impugned order.

7. I have heard learned counsel for both the parties, perused the documents placed on record and considered the submissions made by counsel for both the parties.

8. Sub-section (4) of Section 33 of the POCSO Act clearly provides that, the Special Court shall create a child-friendly atmosphere by allowing a family member, a guardian, a friend or a relative, in whom the child has trust or confidence, to be present in the Court. Although, the prosecutrix in her statement recorded under Section 164 of the Cr.P.C. and in examination-in-chief, has stated that on 22-9-2020 her mother beat her and she does not want to go home again but only on the basis of this fact, it cannot be said that she made statement before the Court under pressure of her mother. Learned Court below has clearly mentioned in the statement of prosecutrix that prosecutrix herself wanted that her statement be recorded in presence of her mother.

9. As per statement of prosecutrix recorded under section 164 of the Cr.P.C., her mother beat her because she had refused to go for grazing her goats. Parents do such things with their child in ordinary course but only on the basis of such act, it cannot be said that the child is uncomfortable or under pressure of her mother.

10. If it was felt at the time of examination of prosecutrix that she is not giving her statement under her free will, then it could have been objected at the time of her examination, but such objection was not raised during that time and after long period of recording of

her statement, the application under Section 311 of the Cr.P.C. has been filed. Moreover, in her cross-examination in para 13, she has denied the suggestion that at Bagicha Court, she had given statement under pressure of her mother.

11. In view of above discussion, I find that the trial Court has not committed any illegality by rejecting the application filed by the applicant under Section 311 of the Cr.P.C. for recalling and re-examination the prosecutrix.

12. Accordingly, the revision being devoid of substance, deserves to be and is hereby dismissed at motion stage.

Sd/-
(NK Chandravanshi)
Judge