

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRR No. 634 of 2021

1. Kush Kumar S/o Bhagwat Koshle Aged About 34 Years,
2. Sukhbai W/o Bhagwat Koshle Aged About 50 Years,

Both are R/o Village Barahi, Tahsil Takhatpur, District Bilaspur, (Chhattisgarh).

---- Applicants

Versus

1. State Of Chhattisgarh, Through The Station House Officer, Police Station Takhatpur, District Bilaspur (Chhattisgarh).

---- Respondent

For Applicants	: Mr. Aditya Khare, Advocate.
For Respondent	: Mr. Anand Verma, Dy. Govt. Advocate.

Hon'ble Shri Justice Gautam Chourdiya

Order on Board

15/11/2021

- 1) Challenge in this revision filed under Section 397/401 of Code of Criminal Procedure is to the judgment dated 12/08/2021 passed by Additional Sessions Judge, First FTSC (POCSO) Act), Bilaspur (C.G.) in Special Criminal Case No. 47/2019 whereby the application under Section 311 of the Code of Criminal Procedure filed by the applicants for recalling the prosecutrix and her mother for cross examination has been rejected.
- 2) Learned counsel for the applicants submits that the Trial Court has wrongly rejected the application under Section 311 of the Code of Criminal Procedure of the applicant without considering the fact that such rejection would adversely affect the defence of the applicants. He submits that the Co-ordinate Bench of this Court has already allowed criminal revision i.e. CRR No. 599/2021 by the order dated 15/09/2021 which was preferred by the co-accused Jaleshwar against the rejection of his application under Section 311 of the Code of Criminal Procedure. Therefore,

on the ground of parity the instant revision be also allowed on the same terms and conditions.

- 3) On the other hand, State counsel supports the impugned order.
- 4) Heard learned counsel for the parties and perused the material available on record.
- 5) Considering the facts and circumstances of the case, without commenting anything on maintainability of the present revision, considering the fact that the Co-ordinate Bench has already allowed the criminal revision of the co-accused against the rejection of his application under Section 311 of the Code of Criminal Procedure in the present case, the impugned order is set aside and the instant revision petition is also **allowed**.
- 6) The Trial Court is directed to summon the victim/prosecutrix and her mother, who had been examined as PW-01 and PW-02 respectively, for their cross-examination by the Counsel for the applicants. This order shall be subject to payment of cost of Rs. 5,000/- (Five Thousand) payable to the District Legal Services Authority, Bilaspur and receipt to this effect be also filed before the Trial Court.

-Sd/-
(Gautam Chourdiya)
Judge

Chandrakant