

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Revision No. 599 of 2021**

Jaleshwar, Son of Sammat Satnami, aged about 28 years, R/o. Village Barahi, Police Station Takhatpur, District Bilaspur (C.G.)

---- Applicant

Versus

State of Chhattisgarh, through : The Police Station Takhatpur, District Bilaspur (C.G.)

----Respondent

For Applicant	: Mr. Rajeev Kumar Dubey, Advocate.
For Respondent/State	: Mr. Dinesh Tiwari, Dy. Govt. Advocate.

Hon'ble Shri Justice N.K. Chandravanshi

Order On Board**15.09.2021**

Heard on admission.

(1) This criminal revision has been filed against the order dated 31.08.2021 passed by Upper Sessions Judge, First Fast Track Court, Special Court (Pocso Act), District Bilaspur in Special Case No. 47 / 2009 (***State of Chhattisgarh v. Kush Kumar & others***) whereby applicant's application under Section 311 of The Code of Criminal Procedure, 1973 (henceforth "the Code") has been dismissed.

(2) Learned counsel for the applicant would submit that Special Case No. 47 / 2009 (***State of Chhattisgarh v. Kush Kumar & others***) is pending in the Court of Upper Sessions Judge, First Fast Track Court, Special Court (Pocso Act), District Bilaspur at the stage of examination of prosecution witnesses. In this case, statement of victim/prosecutrix & her mother has been recorded by the

prosecution on 13-09-2019 as PW-1 & PW-2, respectively. On that day, counsel of the applicant did not appear in the court because he was busy in other cases before other courts, therefore, prosecutrix/victim and her mother have not been examined by counsel of the applicant, though they are main witnesses of the case and they have made material statements against the applicant/accused, therefore, their cross-examination by counsel of the applicant/accused is essential for defence of the applicant/accused. He would further submit that if opportunity to cross-examine the aforesaid witnesses has not been afforded to counsel of the applicant, it will cause great injustice to the applicant/accused. But the court below without considering these important/serious facts, dismissed the application, therefore, impugned order is erroneous, illegal and unsustainable in law.

(3) Per contra, learned counsel for the State would submit that applicant/accused was afforded ample opportunities for cross-examination of the aforesaid witnesses but due to non-availability of his counsel, they were not cross-examined on behalf of his (applicant) counsel, therefore, applicant may be provided opportunity of cross-examination of the aforesaid witnesses by imposing heavy cost.

(4) I have heard learned counsel appearing for the parties and perused the material available on record including impugned order and statements of victim/prosecutrix & her mother.

(5) Statements of victim/prosecutrix & her mother would show that they have not been cross-examined by counsel of the applicant/accused. Perusal of impugned order would show that on 13.09.2019 when these witnesses were examined by the prosecution, counsel of the applicant was called out on three times by the Court but his counsel did not appear mentioning reasons that he is busy in the High Court and thereafter it was informed that he went to Bemetara for some reasons. It seems that counsel for the applicant was deliberately avoiding cross-examination of the aforesaid witnesses. Thus, in absence of

counsel, applicant himself could not cross-examine the aforesaid witnesses, which was of-course not possible for the applicant as he is not competent to do so, therefore, opportunity for cross-examination of the aforesaid witnesses is necessary for the applicant through his counsel because without their cross-examination, the applicant could not defend himself in accordance with law.

(6) In view of the foregoing discussion, the trial Court is directed to summon victim/prosecutrix and her mother, who had been examined as PW-1 & PW-2, respectively, for their cross-examination by counsel of the applicant. This order shall be subject to payment of cost of Rs.3,000/- [*Three thousand*] payable to the District Legal Service Authority, Bilaspur and receipt to this effect be filed before the trial Court.

(7) The criminal revision is allowed to the extent indicated hereinabove.

Sd/-
(N.K.Chandravanshi)
Judge

D/-

