

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Revision No. 669 of 2021**

Dharmendra Yadav, S/o. Fekuram Yadav, aged about 20 years, R/o. Murumkhadan, Pathan Mohalla, Ashok Nagar, P.S.- Sarkanda, District – Bilaspur (C.G.)

---- Applicant

Versus

The State of Chhattisgarh, Through : P.S. Sarkanda, Bilaspur, District Bilaspur (C.G.)

(Prosecution)

----Non-applicant

For Applicant	:	Mr. A.K. Prasad, Advocate.
For Non-applicant	:	Mr. Devesh Chand Verma, Govt. Advocate.

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

01.10.2021

(1) Heard learned counsel for both the parties on the question of admission.

(2) This revision has been preferred against the order dated 14.09.2021 passed by Upper Sessions Judge, First Fast Track Court, Special Court (POCSO Act), Bilaspur in Special Sessions Case No. 115/2020 whereby application under Section 311 of the Code of Criminal Procedure, 1973 (henceforth 'the Code') filed by the applicant has been dismissed.

(3) Brief facts of the case pertaining to this revision is that Special Sessions Trial No. 115/2020 for the commission of offence punishable under Sections 366, 366 (A) & 376 of the IPC and Sections 3 & 4 of The Protection of Children from Sexual Offences Act, 2012 (henceforth "Pocso Act") is being tried against the applicant by the

concerned trial Court. As per the impugned order, examination of accused has been completed, thereafter on 14.09.2021 applicant filed an application under Section 311 of the Code mentioning that some important questions have not been asked in cross-examination of the victim/prosecutrix by earlier counsel of the applicant, which are necessary for just & proper decision of the case, therefore, victim/prosecutrix be called for her further examination.

(4) After affording opportunity of hearing to both the parties, vide impugned order dated 14.9.2021 learned court below dismissed the application observing that statement of victim/prosecutrix was recorded as (PW-2) on 3.2.2021, in which, she has been cross-examined at length by counsel of applicant, thereafter, after 8 months, application under Section 311 of the Code has been filed, which does not seem bonafide and proper because the proper reasons have not been assigned in the said application that on what facts, applicant wants further examination of victim/prosecutrix.

(5) Being aggrieved and dissatisfied with the aforesaid rejection order, the present criminal revision has been preferred by the applicant.

(6) Perusal of the application under Section 311 of the Code filed by the applicant would show that it has not been mentioned in the aforesaid application, on which point of facts cross-examination has not been made by earlier counsel of the applicant. During course of arguments, learned counsel for the applicant raised various facts with regard to which, the cross-examination has not been made from victim / prosecutrix, but those facts were not mentioned in the application, therefore, learned trial Court is unable to consider reasonably that whether recalling of victim / prosecutrix is necessary for just and proper decision of the case or not. Without disclosing such

facts before the trial Court, directly raised those facts before this Court could not be taken into consideration because in such a situation, it is not possible to assess by this Court that whether the trial Court has considered the matter properly or not.

(7) Sub-Section 5 of Section 33 of the Pocso Act provides that the Special Court shall ensure that the child is not called repeatedly to testify in the Court. Looking to the stringent provision of the Pocso Act, counsel of defence side should be very much prepared for cross-examination of victim/prosecutrix, so that child witness should not be called repeatedly for his/her examination.

(8) In the instant case, as has been stated above that without mentioning the facts with regard to which further cross-examination of the victim/prosecutrix is required, application under Section 311 of the Code had been filed and the points raised by counsel of the applicant during the course of arguments before this Court may be relevant for just decision of the case particularly looking to the affidavit of the father of victim/prosecutrix, therefore, I feel inclined to grant liberty to the applicant that if he wants to further cross-examine the victim/prosecutrix with regard to those facts, which had been left inadvertently by earlier counsel, then, he may file fresh application under Section 311 of the Code before the trial Court. Thus, in the event of filing such an application, the trial Court is directed to re-consider the matter afresh in accordance with law without being influenced by the impugned order dated 14.09.2021.

(9) With the aforesaid observation & direction, the criminal revision stands disposed of.

Sd/-

(N.K. Chandravanshi)
Judge

D/-

