

IN THE HIGH COURT OF ORISSA AT CUTTACK
CRLREV NO. 21 of 2022

Idu Khan @ Sk. Iddris

....

Petitioner

Mr.Brundaban Rout, Adv.

-versus-

State of Odisha

....

Opposite Party

Mr. K.Gaya,ASC

CORAM:

MR. JUSTICE S.K. PANIGRAHI

ORDER

03.02.2022

Order No.

01. 1. This matter is taken up through Video Conferencing mode.
- 2.The petitioner has filed this revision application under Section 401 read with Section 482 of Cr.P.C challenging the order dated 21.12.2021 passed by Adhoc Additional Sessions Judge, (FTSC), Balasore in Special Case No.72 / 141 of 2016-15 for rejecting the petition under Section 311 Cr.P.C. for cross examination of P.W.1(Sashmita Sethy).
3. Learned counsel for the petitioner submits that the petitioner being one of the accused in Special Case No.72 /141 of 2016-15 arising out of Khaira P.S.Case No.67 of 2015 for the offence under Sections 363/366/376(2)(I)/374 of the Indian Penal Code read with Section 6 of POSCSO Act and Section 3(i)(x)(xii) of SC & ST (P.A) Act, the trial court after framing of charges against the accused persons posted the case to 03.11.2021 for examination of witnesses. On that day a petition under Section 317 Cr.P.C. along with a petition for time was filed by the counsel for the petitioner. The petition under Section 317

Cr.P.C. was allowed but the petition seeking time was rejected by the learned Special Court on the ground of Section-33(5) of POCSO Act. Further learned counsel for the petitioner filed a petition under Section 311 Cr.P.C. on 15.12.2021 for cross examination of the P.W.1 on the ground mentioned therein, but the learned Special Court also rejected it on the same grounds as aforesaid.

4. It is further contended that one case vide Criminal Revision No.121 of 2021 has been disposed off by this Court with the observation that the impugned order is interlocutory and not revisable. This Court further granted the petitioner the liberty to file an appropriate application. Accordingly, the present application has been filed.

5. In support of his contention, learned counsel for the petitioner also cited some precedents in the likes of **Natasha Singh vrs. CBI (State)**¹, **Susanta Kumar Moharanta and others Vrs. State of Orissa**² **Laxmidhar Paikray Vrs. State of Orissa**³ and **Tikayat Routray and Ors. Vrs. State of Orissa**⁴, wherein the scope of Section 311 of the Cr.P.C. has been discussed very succinctly. The object of the said Section is to enable the court to arrive at the truth. The test of “just decision” is not limited to something necessary in the presence of the accused only. It may equally benefit the prosecution. The court is not to act as a silent spectator and act mechanically. It has the duty to see that justice is done. The court has to see that

¹ Criminal Appeal No.709 of 2013 (arising out of SLP (Crl)No.3271 of 2013)

² (2013) 56 Ocr 298

³ (2012) 53 OICR -1049

⁴ (2009) 43 OCR -268

a guilty person does not go unpunished and an innocent person is punished.

6. Considering the aforesaid position of law and in the interest of justice, this Court while setting aside the order dated 21.12.2021 passed by the learned Adhoc Additional Sessions Judge, (FTSC), Balasore in Special Case No.72 /141 of 2016-15 also directs the learned court below to allow the petition filed by the petitioner under Section 311 of the Cr.P.C. to recall P.W.1 (Sashmita Sethi) for further cross-examination.

7. With the aforesaid direction the CRLREV is disposed of.

6. As the restrictions due to resurgence of Covid-19 are continuing, learned counsel for the parties may utilize a printout of the order available in the High Court's website, at par with certified copy, subject to attestation by the Advocate concerned with his/her seal, in the manner prescribed vide Court's Office Order dated 7th January, 2022.

(S.K. Panigrahi)
Judge