

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLMC No.318 of 2022

Susanta Barik

....
Mr. A.K. Sarangi, Advocate

Petitioner

-Versus-

State of Orissa

....
Mr. Tapas Kumar Praharaj, S.C.

Opposite Party

CORAM:
MR. JUSTICE R.K. PATTANAİK

ORDER
05.12.2022

Order No.

04.

1. Heard learned counsel for the petitioner and learned counsel for the State.
2. Instant case under Section 482 Cr.P.C. is filed by the petitioner for quashing of the impugned order dated 3rd March, 2021 passed by the learned Additional District and Sessions Judge, Jajpur in C.T. Case No.130 of 2013 whereby an application under Section 311 Cr.P.C. dated 24th February, 2020 under Annexure-2 to recall P.Ws.1, 4 & 5 for further cross-examination was allowed in part.
3. Copy of the impugned order under Annexure-1 is perused.
4. Learned counsel for the petitioner submits that the petitioner is the husband and an application under Section 311 Cr.P.C. was moved by him for recall of P.Ws.1, 4 and 5 was partly

allowed by the learned court below declining the same in respect of P.Ws.4 and 5, which is unjust and illegal. It is further submitted that the petitioner had approached this Court in CRLMC No.2828 of 2019 to recall the said witnesses after having been rejected by the learned court below and the same was allowed vide order dated 11th October, 2019 and thereafter, the questionnaire was prepared for consideration of the court but recall of P.Ws.4 and 5 for further cross-examination was refused. It is submitted that in the interest of justice, the above two witnesses are needed to be further cross-examined but learned court below without any basis rejected the said prayer vide the impugned order under Annexure-1.

5. Mr. Praharaj, learned counsel for the State submits that earlier an application was moved by the petitioner and the same was allowed and thereafter, the questionnaire was prepared to put the same to P.Ws.4 and 5 but then learned court below after assigning reasons, rightly rejected it in respect of P.Ws.4 and 5.

6. It is submitted that cross-examination in respect of P.W.1 was allowed since he is staying at a far off place, his further cross-examination is still to be accomplished. The questionnaire in application under Section 311 Cr.P.C. as at Annexure-2 is perused by this Court. The copies of the depositions are at Annexure-4 from which the Court finds that even though the said witnesses have been cross-examined which was held in the year 2014 but in the facts and circumstances of the case, the petitioner being the husband of the deceased should be provided an opportunity to put the questions which are detailed in the application filed under Section 311 Cr.P.C. In other words, the Court should allow further cross-examination of P.Ws.4 and 5 so as to enable the petitioner to put the questions brought on record. The delay which has happened since the time of discharge of P.Ws.4 and 5 is condonable for the fact that petitioner

had earlier approached this Court for the self-same relief. In other words, the order dated 3rd March, 2021 should be set aside and the prayer for recall of P.Ws.4 and 5 ought to be allowed, which would serve the purpose and meet the ends of justice. Accordingly, it is ordered.

7. As a necessary corollary, the impugned order dated 3rd March, 2021 passed by the learned Additional District and Session Judge, Jajpur in C.T. Case No.130 of 2013 is hereby set aside.

8. At the same time, the CRLMC stands allowed. Consequently, the learned Sessions Judge, Jajpur is directed to recall P.Ws.4 and 5 for the purpose that cross-examination by the petitioner in connection with C.T. Case No.130 of 2013, which shall be accomplished on the date of examination itself without entertaining any adjournment from the side of the defence.

9. Issue urgent certified copy of this order on proper application.

(R.K. Pattanaik)
Judge