

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLMC No.2210 of 2016

Kedarswar Samantaray and others* *Petitioners

M/s. M. Mohanty, Advocate and associates

-versus-

State of Orissa

.... Opposite Party

Mr. Ishwar Mohanty, A.S.C.

**CORAM:
THE CHIEF JUSTICE**

Order No.

**ORDER
14.10.2022**

03. 1. The challenge in the present application is to one portion of the order dated 4th July 2016 passed by the Additional Sessions Judge, Jagatsinghpur declining the Petitioners' application under Section 311 of the Code of Criminal Procedure, 1973 (Cr.P.C.) seeking recall of P.W.15 for cross-examination.
2. It must be noted at the outset that by an another order on the same date, the trial court had allowed a similar application under Section 311 Cr.P.C. of the Additional P.P. by issuing summons to a witness.
3. The ground for rejection of the application of the present Petitioners was only that it would delay the conclusion of the trial. The reason put forth by the Petitioners for seeking recall of P.W.15 was that the Advocate who was to undertake the cross-examination was unwell on the relevant date. This appears to be a genuine request which should not have been rejected outright by the trial court.

4. Moreover, while admitting the present application on 10th August 2016, this Court had stayed further proceedings in the trial and that stay has continued for almost six years. Consequently, the plea that recall of P.W.15 would delay the proceedings is no longer a valid objection.

5. For the aforementioned reasons, the Court sets aside the impugned order dated 4th July 2016 of the trial court insofar as it has rejected the Petitioners' application under Section 311 Cr.P.C. for recall of P.W.15 for cross-examination. The said application will now be taken to have been allowed.

6. The trial in CT No.123 of 2012 will proceed before the Additional Sessions Judge, Jagatsinghpur where it will be listed for directions on 12th December, 2022. On that date, the Additional P.P. will ensure the presence of both Umakanta Nayak son of Sukadev Nayak of village Sanagan, Jadupur, PS-Patakura, District-Kendrapada, at present at village-Tarenigada, PS-Paradeep, District-Jagatsinghpur and of P.W.15 Asim Mandal for his cross-examination.

7. The CRLMC is disposed of in the above terms. The interim order passed earlier stands vacated.

8. Issue urgent certified copy of this order as per rules.

(Dr. S. Muralidhar)
Chief Justice