

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLMC No.1137 of 2022

Binaya Kumar Sahu

....

Petitioner

Mr. Amit Kumar Nath, Advocate

-Versus-

State of Odisha

....

Opposite Parties

Mr. Sitikanta Mishra, ASC

CORAM:

MR. JUSTICE R.K. PATTANAİK

ORDER

14.11.2022

Order No.

- 03.
1. Heard Mr. Nath learned counsel for the petitioner and Mr. Mishra, learned counsel for the State.
 2. Instant petition under Section 482 of Cr.P.C. is filed by the petitioner assailing the impugned order dated 12th April, 2022 under Annexure-2 passed in Special (POCSO) Case No. 64 of 2017 pending in the court of learned Adhoc-cum-Additional District Judge, (FTSC), Angul, whereby, application under Section 311 Cr.P.C. filed by the petitioner to recall of P.Ws. 1 & 2 was rejected.
 3. Learned counsel for the petitioner submits that P.W. 1 is the victim and P.W. 2 is the mother of the victim/informant and although they have been examined, cross-examined and discharged but some relevant questions were left out which have been detailed in application under Section 311 Cr.P.C. as at Annexure-2. It is further submitted that unless such questions are put to P.Ws. 1 & 2 by recall and further cross-examination, the petitioner would be substantially

prejudiced and while contending so, the questions which are sought to be asked to P.Ws. 1 & 2 and indicated in Anneuxre-2 have been referred to by the learned counsel for the petitioner.

4. Mr. Mishra, learned counsel for the State on the other hand submits that all the relevant documents with regard to date of birth of P.W. 1 and on other aspects have been marked as exhibits during trial and therefore, there is no need for recall of P.W.s 1 & 2 for further cross-examination and therefore, rightly the learned court below declined to exercise the discretion and rejected the application under Section 311 Cr.P.C. While praying for recall, learned counsel for the petitioner refers to the certified copies of the depositions of P.W.s 1 as well as P.W. 2, in fact, both the witnesses have been cross-examined and discharged in the year 2017 which is nearly five years back. It is fairly admitted by the learned counsel for the petitioner that there has been a delay in applying for recall and further cross-examination of P.Ws. 1 & 2.

5. Recall for re-examination or cross-examination as the case may be of a witness can be considered by a court at any stage of proceeding which is the mandate of law as envisaged in Section 311 Cr.P.C. It is also a settled law that invaluable right of the accused cannot be taken away or infringed upon on the ground of delay. No doubt, both the witnesses were examined in 2017 and there has been delay by passage of time, however, the Court is of the view that at least P.W. 1, namely, the victim should be recalled for the purpose of further cross-examination so that defence gets an opportunity to confront the relevant questions which are mentioned in the application under Section 311 Cr.P.C. subject to cost. In other words, the Court is not inclined to allow recall in respect of P.W.2 but directs that P.W. 1, namely, victim should be cross-examined further by the

defence, since the relevant questions are related to the conduct of P.W. 1 against a claim that she was in a relationship with the petitioner at the relevant point of time.

7. Accordingly, it is ordered.

8. Consequently, CRLMC stands allowed in part. As a corollary, impugned order dated 12th April, 2022 passed in Special (POCSO) Case No. 64 of 2017 is set aside to the extent indicated above. Consequently, learned Adhoc-cum-Additional District Judge, (FTSC), Angul is directed to issue process to P.W.1, namely, the victim for further cross-examination which shall be ensured subject to payment of cost of Rs.2000/- payable to P.W.1 on the date of cross-examination and in the event P.W. 1 appears for the said purpose, it shall be accomplished on the date of her examination itself without entertaining any request for adjournment.

9. Urgent certified copy of this order be issued as per rules.

(R.K. Pattanaik)
Judge