

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLMC No. 1141 of 2017

Gitanjali Sahu

....

Petitioner

Mr. G.N. Sahu, Advocate

-versus-

Chakadola Sahu and another

....

Opposite Parties

Mr. J. Katikia, A.G.A. for the State

M/s. S. Mohanty, Advocate for O.P. No.1

CORAM:

THE CHIEF JUSTICE

ORDER

25.11.2022

Order No.

06. 1. The present petition is by a victim, who was declared hostile by the trial court in the initial stage after her examination-in-chief and cross-examination in C.T. Case No.238 of 2013 in the Court of Special Judge, Kalahandi, Bhawanipatna, which was registered against Opposite Party No.1-Accused for the offences under Sections 376(2)(1)(b)/292-A/500/506 IPC read with Section 6 of the POCSO Act and Section 6 of the Indecent Representation of the Women (Prohibition) Act, 1986 as well as Section 66E of the Information and Technology Act, 2000.
2. By the impugned order dated 25th October 2016, the Special Judge, Kalahandi, Bhawanipatna rejected the application filed by the Petitioner under Section 311 Cr PC in which she prayed that she herself should be allowed to be recalled and further examined in the trial.

3. After hearing learned counsel for the Petitioner as well as the learned counsel for the Accused, the Special Judge rejected the application on the ground that on the basis of the victim having been declared hostile, the Accused had already been enlarged on bail and under Section 33(5) of the POCSO Act, a Special Court had to ensure that “the child is not called repeatedly to testify in the court”. The trial Court observed “in absence of any material that the best interest and welfare of the victim is affected, this court does not find any justifiable reason to recall the victim for further examination.”

4. Learned counsel for the Petitioner has pointed out that in the application the Petitioner had clearly stated that she had been pressurized by the parents of the Accused to suppress the truth under a promise that they would accept her but subsequently they resiled from that promise. As a result, she wanted truth to come out. Learned counsel for the victim/Petitioner also refers to the decision of this Court in *State of Orissa v. Durjo @ Duryodhana Sanamajhi (2011) 48 OCR 374* in support of his plea.

5. Learned counsel for the Accused on the other hand resists the above plea on the ground that the victim was fully aware of the facts and voluntarily deposed in the first instance. According to him, permitting her now to be recalled for examination would amount to making good the case of the prosecution, which should not be permitted.

6. Having considered the above submissions, the Court is of the view that in the present case the Special Judge was not right in the

observation that in terms of Section 33(5) of the POCSO Act, the victim should not be called 'repeatedly' to testify in the court and, therefore, her application under Section 311 Cr PC should be rejected. This is a case where the child herself was applying under Section 311 Cr PC to be recalled in order to place the entire facts within her knowledge before the Court. Therefore, Section 33 (5) of the POCSO Act was not a bar to such a request.

7. Further, when the victim herself is saying that she was pressurized into suppressing the truth and wanted to speak the truth, it cannot be said that it would not be in the "best interest and welfare of the victim." Therefore, on this count also the Special Judge appears to have erred in law.

8. As far as the apprehension of the Accused is concerned, he will in any event have a full opportunity of cross-examining the victim. Consequently, that cannot be a reason to decline the application for recall. The attempt of the trial court should be to arrive at the truth and if the victim herself is stating that on account of a false promise held to her by the parents of the Accused, she had suppressed the truth in the first instance, that could not have been brushed aside lightly by the Special Judge.

9. For all of the aforementioned reasons, the Court finds the impugned order dated 25th October 2016, to be unsustainable in law and hereby sets it aside. The application filed by the Petitioner under Section 311 Cr PC will be treated as allowed. She will now appear in the trial court in the aforementioned C.T. Case No.238 of 2013 on 16th January, 2023 in the Court of the Special Judge,

Kalahandi, Bhawanipatna. Her examination and cross-examination should take place in the Vulnerable Witness Deposition Centre of the same District Court. It is made clear that the Accused, who is represented by learned counsel here today will also remain present in the aforementioned Court on the said date. A copy of this order be sent to the concerned Court forthwith.

10. The CRLMC is disposed of in the above terms.

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

S.K. Guin



(Dr. S. Muralidhar)
Chief Justice