

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLMC No. 1529 of 2022

Sunil Basak

....

Petitioner

Mr. Debnarayan Pattanaik, Advocate

-Versus-

State of Odisha

....

Opposite Parties

Mr. Manoranjan Mishra, ASC

CORAM:
MR. JUSTICE R.K. PATTANAİK

ORDER
25.08.2022

Order No.

03.

1. Heard learned counsel for the petitioner and learned counsel for the State.
2. The present petition under Section 482 Cr.P.C. has been filed by the petitioner praying for setting aside the impugned order dated 9th May, 2022 passed by the learned Ad-hoc Addl. District Judge (F.T.S.C.), Angul in Special (POCSO) Case No.109 of 2013 rejecting the application filed under Section 311 Cr.P.C. to cross-examine P.Ws.1 and 2,
3. Perused the impugned order which is at Annexure-1 and other documents under Annexures-2 to 5, which includes the deposition of P.W.1.
4. Learned counsel for the petitioner submits that learned court below without appreciating the fact that P.Ws.1 and 2 have not been cross-examined at all by the defence declined to recall of

P.Ws.1 and 2 on the ground that there been delay and therefore, the impugned order dated 9th May, 2022 rejecting the application filed under Section 311 Cr.P.C. is absolutely unjustified, inasmuch as, the fundamental right to a fair trial has been denied.

5. Learned counsel for the State on the other hand submits that witnesses, namely P.Ws.1 and 2 were examined in the year 2013 and after a long lapse the petitioner stated to have moved the court below and therefore, the impugned order under Annexure-1 should not be interfered with after such inordinate delay. In other words, according to State, the impugned order under Annexure-1 is absolutely justified and in accordance with law and requires no interference by this Court.

6. Learned counsel for the petitioner referring to the deposition of P.W.1/victim at Annexure-2 and other documents including the medical examination report of the victim and also the deposition of the doctor as at Annexure-3 submits that it contradicts the claim of sexual assault. It is further submitted that P.Ws. 1 and 2 have not at all been cross-examined as the earlier conducting counsel chose not to do so but then, unless such evidence is subject to cross-examination, the petitioner would be substantially prejudiced and therefore, an opportunity should have been granted to the petitioner.

7. It is not denied by the learned counsel for the State that P.Ws. 1 and 5 have not been cross-examined by the defence during trial. Of course, there has been a delay as both the witnesses have been examined in the year 2013. As it appears from the record, the petition filed under Section 311 Cr.P.C. has been filed and rejected recently. In any case, P.Ws.1 and 2 are the material witnesses and none of them has been cross-examined and without cross-

examination, both have been discharged and considering the charges levelled, a last opportunity should be provided to the petitioner to cross-examine them or else, it would definitely prejudice him. For the reasons stated, the impugned order under Annexure-1 has to be interfered with as it was only on the ground of delay that the application under Section 311 Cr.P.C. was rejected and as such, learned counsel for the State fairly concedes that there is no bar under POCSO Act to entertain such a request since restriction is with regard to repeated attempts to recall a victim witness.

8. Accordingly, it is ordered.

9. Consequently, the impugned order under Annexure-1 is hereby set aside with a direction to the learned court below to recall P.Ws. 1 and 2 for the purpose of cross-examination by the defence which shall be accomplished on a single date without any unnecessary adjournment.

10. With the above direction, the CRLMC stands disposed of subject to payment of cost vis-à-vis expenses to be borne towards recall of the witnesses which shall be fixed by the learned court below and payable by the petitioner at an early date.

(R.K. Pattanaik)
Judge