

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLMC No.1692 of 2011

Trilokesh Naik *Petitioner*
State of Orissa *Opposite Party*
versus-

CORAM: JUSTICE S. PUJAHARI

Order
No.

ORDER
04.05.2022

19. 1. This matter is taken up through hybrid mode.
2. This application under Section 482 of Cr.P.C. has been filed by the Petitioner with a prayer to quash the order dated 23rd February, 2011 passed by the learned S.D.J.M., Birmaharajpur in G.R. Case No.7 of 2003 with further prayer to direct the court below to recall P.Ws.8, 9 and 12 for further cross-examination in the said case.
3. Heard the learned counsel for the Petitioner and the learned counsel for the State.
4. It appears that the Petitioner's prayer for recall of P.Ws. 8, 9 and 12 for further cross-examination having been refused by the trial court in a case under Section 409 of I.P.C., he has come to this Court challenging the same.
5. From the impugned order, it appears to this Court that as the learned Additional Sessions Judge, Sonapur taking note of the facts and circumstances, rejected the Petitioner's prayer

for recall of P.W.11 for cross-examination, the prayer for recall of the P.Ws. 8, 9 and 12 for further cross-examination was declined, as he finds no reason for recall of the said witnesses. Furthermore, it has also weighed the mind of the court that this court is pressing hard for disposal of the said case. As such, it was refused. The case is of the year 2003. No doubt, it is year old case, but year oldness of the case and the court pressing to dispose of the case cannot be ground to refuse for recall the aforesaid prosecution witnesses, as those are not germane for the purpose. If examination of the witnesses is essential for just decision of the case that should have been the consideration for recall of the witnesses at any stage of the trial, is the mandate of Section 311 of Cr.P.C.

6. It appears to this Court that the trial court has not assigned good reasons for refusing to recall of the aforesaid prosecution witnesses. The Petitioner had also given the questionnaire which to be asked on cross-examination of the said witnesses. In the meanwhile, more than a decade has been elapsed. It is difficult to procure the attendance of the said witnesses at this stage. The Petitioner having chance of cross-examination also, but did not avail of the same.

7. Be that as it may, taking note of the aforesaid facts and circumstances of the case, it is directed to the learned S.D.J.M., Birmaharajpur to recall the aforesaid prosecution witnesses soon after receive of the aforesaid order, but if their attendance cannot be secured, even taking required effort, the evidence for

the prosecution be closed, notwithstanding the said order of recall and the trial court shall thereafter giving a chance to the defence to address his rebuttal evidence dispose of the proceeding expeditiously.

8. With the aforesaid order, this Criminal Misc. Case stands disposed of.

9. The order must be produced by the Petitioner before the trial court within 20th June, 2022 to avail of the benefit of this order.

(S. Pujahari)
Judge

DA

