

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLMC No. 1633 of 2022

Mithun Murmu @ Mithun @ Subash Petitioner
Murmu

Mr. Suryakanta Dwibedi, Advocate

-Versus-

State of Odisha Opposite Party
Mr. Tapas Kumar Praharaj, SC for State

CORAM:
MR. JUSTICE R.K. PATTANAIK

ORDER
01.11.2022

Order No.

- 03.
1. Heard Mr. Suryakanta Dwibedi, learned counsel for the petitioner and Mr. T.K. Praharaj, learned Standing Counsel for the State.
 2. Instant petition under Section 482 Cr.P.C. is filed by the petitioner assailing the impugned order dated 16th May, 2022 passed by the learned Adhoc Additional Sessions Judge (FTSC), Balasore in Special Case No.92 of 2019 whereby application under Section 311 Cr.P.C. moved by the petitioner to recall P.W.3 was rejected.
 3. Learned counsel for the petitioner submits that P.W. 3 is the victim and she has not been cross-examined at all by the counsel for the petitioner and while claiming so, he referred to her deposition, a copy of which is at Annexure-2. It is submitted that in the absence

of the conducting counsel, the victim P.W. 3 could not be cross-examined.

4. Mr. Praharaj, learned Standing Counsel for the State submits that the informant is a vulnerable witness and she was examined and discharged on 21st December, 2021 and recall at this point of time would her to subject unnecessary harassment. Referring to the provisions of POCSO Act, he submitted that within a stipulated period of time, the trial has to be concluded as further delay to cross-examine P.W.3 would seriously prejudice her. There is no quarrel over the provision of law in POCSO Act that the trial is to be accomplished within the time stipulated. However, in the present case, the trial is pending since 2019 and P.W.3 was examined in 21st December, 2021 and according to the learned counsel for the petitioner due to absence of the conducting counsel of the petitioner, she could not be examined during trial.

5. On a perusal of Annexure-3, the Court finds that P.W. 3 was examined and cross-examined. In the considered view of the Court the petitioner should be provided an opportunity to cross-examine P.W.3. There has been a delay of 4 months since the victim was examined and discharged. However, despite a delay of 4-5 months, the Court is of the opinion that the right of the petitioner should not be taken away without just ground. Rather, the petitioner should be allowed to cross-examine P.W.3 and for the said purpose, she has to be recalled. Accordingly, it is ordered.

6. Consequently, the CRLMC stands allowed.

7. The impugned order under Annexure-1 passed by the learned Adhoc Additional Sessions Judge (FTSC) Balasore in Special Case No.92 of 2019 is hereby set aside.

8. Resultantly, the court below is directed to recall P.W. 3 for the purpose of cross-examination which shall be completed on the date of her appearance itself without any adjournment of the matter.
9. Issue urgent certified copy of this order as per rules.

(R.K. Pattanaik)
Judge

U.K.Sahoo

