

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLMC No.1695 of 2022

Basanta Kumar Rath

....

Petitioner

Mr. Jyotirmaya Sahoo, Advocate

-Versus-

State of Odisha

....

Opposite Party

Mr. S.S.Mohapatra, ASC

CORAM:
MR. JUSTICE R.K. PATTANAİK

ORDER
02.09.2022

Order No.

- 01.
1. Heard learned counsel for the petitioner and learned counsel for the State.
 2. Present petition under Section 482 Cr.P.C. is filed by the petitioner for quashing of the impugned order under Annexure-3 by the learned court below which rejected an application filed under Section 311 Cr.P.C. having refused to recall the IO for his further cross-examination on the grounds stated therein.
 3. Perused the impugned order under Annexure-2, whereby, the request for recall and further cross-examination of the IO was declined by the learned court below on the ground that most of the questions are either directly or indirectly have already been asked to him and therefore, the same is not necessary.

4. Learned counsel for the petitioner submits that a detailed questionnaire was prepared and put in place in the application under Section 311 Cr.P.C. for being confronted to the IO as the earlier conducting counsel did not elaborately cross-examine him and such cross-examination is in relation to the dowry related demands so claimed by some of the witnesses including P.W.1 but without any reasonable basis, the learned court below rejected the same and passed the impugned order under Annexure -2 which is, therefore, liable to be interfered with and set aside in the interest of justice with a consequential direction for further cross-examination which is objected to by the learned Standing Counsel Mr. Praharaj on the ground that the IO had been recalled in 2018 and was cross-examined fully and discharged and that apart, the learned court below held that all such questions had already been put to him and as such, there was no justification.

5. A copy of the application filed under Section 311 Cr.P.C. is at Annexure-1 which contains the details of questions intended to be put to the IO during further cross-examination, if he had been recalled for the same.

6. Mr.Sahoo, learned counsel for the petitioner submits that the questions are relevant and even though the IO had been earlier cross-examined but inadvertently, the same could not be confronted and hence, for just appreciation and adjudication of the matter, the IO should be recalled at the cost of the petitioner. No doubt, the IO was cross-examined and discharged but the petitioner intends to put some questions with regard to dowry related demands and to confront him regarding the statements made by P.W.s 1, 2 & 3 in particular. In fact, there is no bar as such to recall a witness for re-examination or further

cross-examination at any stage but it should be with a necessity felt and realized by the court. In the instant case, the petitioner filed an application under Section 311 Cr.P.C. to confront the IO regarding the statements made by P.Ws. 1, 2 & 3 before him as regards the cash demand and demand of other items which in the considered view of the Court should be allowed as a last chance as the prosecution shall have the occasion to counter it if so desired. Of course, the learned court below held that all the questions have been directly or indirectly asked to the IO along with other questions but since a detailed questionnaire has been prepared, in the peculiar facts and circumstances of the case, the Court is of the opinion that a last opportunity should be provided to the petitioner to further cross-examine him which, however, shall be subject to cost.

7. Accordingly, it is ordered.

8. In the result, the CRLMC stands allowed. Consequently, the impugned order under Annexure-2 is set aside with a direction that the IO shall be recalled for the purpose of further cross-examination on a specified date which is to be confined to the questionnaire i.e. Annexure-1, however, subject to payment of cost by the petitioner so determined by the learned court below. It is made clear that the entire exercise of further cross-examination shall be accomplished on the date of examination of the IO itself without any adjournment.

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

(R.K. Pattanaik)
Judge