

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLMC No.1932 of 2022

Shridhuli @ Dhuli Manoj @ Manoj Petitioner
Dhuli.

-versus-

State of Odisha & others. Opposite Parties

CORAM: JUSTICE S.PUJAHARI

ORDER
02.08.2022

Order No.

02.

1. This matter is taken up through Hybrid mode.
2. The petitioner in this application under Section 482 of the Code of Criminal Procedure (for short “Cr.P.C.”) has prayed for quashing of the order dated 20.04.2022 passed by the learned Addl. Sessions Judge-cum-P.O, Special Court, POCSO Act, Rayagada in T.R. No.6 of 2017 rejecting his petition under Section 311 of Cr.P.C.
3. Heard the learned counsel for the petitioner and the learned counsel for the State.
4. As it appears, the petitioner has sought for recall of the victim (P.W.1) and the Informant (P.W.2) to put certain questions / suggestions. Such prayer of the petitioner having

been rejected by the trial Court vide the impugned order dated 20.04.2022, the petitioner has come to this Court challenging the same.

5. Mr. Tripathy, learned counsel appearing for the petitioner fairly submits that he does not want to put any irrelevant question / suggestion to the victim, but he wants to put only one question as during the cross-examination of the said witness who turned hostile, it was put by the Public Prosecutor while cross-examining her indicating the fact that the petitioner on giving promise to marry her had sexual intercourse with her. Unless the victim (P.W.1) in this case is recalled and from her the answer to the aforesaid question has been elicited, the petitioner would suffer irreparable loss and injury.

6. However, Mr. Praharaj, the learned counsel for the State while defending the impugned order vehemently submits that such contention of the learned counsel for the petitioner is without any substance, especially in a case under the POCSO Act in which repeated calling of the child witness to the Court is prohibited. It is further submitted that the petitioner spent three and half years being not in a position to detect the aforesaid and did not raise any objection that his counsel could not put certain vital questions to the victim, and now when the case is at the concluding stage he has made such a prayer. The trial Court on taking into consideration the entire facts and also

having regard to the law laid down in the case of *Nisan Khan vrs. State of Uttaranchal*, reported in (2006) 9 SCC 386, wherein it is stated that after one year a witness should not be recalled, having rejected the prayer of the petitioner, the entire design of the petitioner is only to delay the proceeding and patch up the lacuna. Otherwise also, it is submitted by him that this being a case of rape of a child, who has in the meanwhile attained the majority and married elsewhere, if summons is sent to her, that would jeopardize her family life in view of the stigma attached to a victim of rape, though she had no contribution to the incident in any manner. Therefore, the impugned order of the learned trial Court warrants no interference by this Court, submits the learned counsel for the State.

7. After going through the contentions raised vis-à-vis the materials on record, this Court finds no merit in the contention of the petitioner, inasmuch as he remained complacent for three and half years with the procedure adopted by the trial Court and also made no grievance that non-examination of the victim for the clarification as stated would cause immense harassment and injustice to him. It also appears that the accused-petitioner is facing trial for the charge of rape committed against a child. He complained about the deficiency in the cross-examination of the victim which is said to have been conducted by an inexperienced counsel. The aforesaid can hardly be a ground to recall a witness already examined. So far as the merit of the

prayer is concerned, even though the trial Court has not expressed in very many words on the question of essentiality of recalling the victim for further cross-examination, but taking note of the facts and situation and also the questionnaire that was intended to be put to the victim, the trial Court rejected the prayer made. From the same, it can very well as such be inferred that the trial Court did not feel it essentiality of examination of the victim for just decision in the case. The same appears to this Court in the given facts and circumstances to be just and proper.

8. For the reasons stated hereinbefore, this Court is not inclined to interfere with the impugned order.

9. Accordingly, this CRLMC being devoid of merit stands dismissed.

(S. Pujahari)
Judge

MRS