

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLMC No.2294 of 2022

Sandhya Nag

....

Petitioner

Mr. S.S.Ray-2, Advocate
and Mr.A.Tripathy, 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 recall and further cross-examination of the IO, namely, P.W.23 in connection with Sessions Trial Case No. 11 of 2020 arising out of Dharuadihi P.S. Case No. 71 of 2019 pending before the learned court of District & Sessions Judge, Sundargarh on the grounds stated therein.
3. Perused the F.I.R. i.e. Anneuxre-2 and also copy of the charge sheet i.e. Anneuxre-3 besides other documents.
4. Learned counsel for the petitioner submits that an application under Section 311 Cr.P.C. was filed before the learned court below with a prayer to recall the IO, namely, P.W.23 for further cross-

examination with regard to questions mentioned therein but the same was rejected. It is further submitted that all the questions are relevant for proper adjudication of the matter, the fact which was completely lost sight of by the learned court below and therefore, the same should be allowed as a last chance or else, it would substantially prejudice the petitioner. It is apprised to the Court that the case is presently pending at the stage of argument before the learned court below. According to the learned counsel for the petitioner, the cross-examination of P.W.23 was brief and some relevant questions could not be put to her or inadvertently left out during cross-examination and hence, in the interest of justice, an opportunity should be provided which is strongly objected to by the learned Standing Counsel Mr. Mohapatra by contending that the learned court below discussed in detail regarding the questions intended to be put to the IO and rightly rejected the prayer for recall.

5. The Court perused the copies of the depositions as at Annexure-4 series. The learned counsel for the petitioner submits that no doubt the IO was examined and cross-examined and thereafter discharged but some relevant questions could not be put to her on the date of cross-examination and therefore, she should be recalled. The Court perused the application filed under Section 311 Cr.P.C. which is at Annexure-5. As per the questionnaire, it is prayed for the petitioner that the IO is to be confronted as regards the T.I. parade and other aspects of investigation. The learned court below answered the questions and rejected the prayer of the petitioner on the ground that they are not relevant for the purpose of trial. The learned counsel for the petitioner submits that the petitioner is a lady and she should be given an opportunity to further cross-examine the IO vis-a-vis recovery of the body of the victim which is alleged to be from an adjacent

house. It is also submitted that the case is pending at the stage of argument and hence, as a last chance, such an opportunity should be provided considering the nature and gravity of the offence alleged.

6. Having heard the submissions of the learned counsel appearing for the respective parties and taking into account the totality of the circumstances of the case, the Court is of the view that though the petitioner had the opportunity to cross-examine the IO once but it was a brief one and therefore, a last opportunity to further cross-examine her should be provided in the interest of justice considering the fact that she is facing trial for an offence punishable under Section 302 IPC.

7. Accordingly, it is ordered.

8. In the result, the CRLMC stands allowed. Consequently, the impugned order dated 11th August, 2021 under Annexure-1 is set aside. As a corollary, the petitioner is allowed to further cross-examine the IO as a last chance which shall be accomplished on a specified date as fixed by the learned court below.

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

(R.K. Pattanaik)
Judge