

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLMC No.2404 of 2022

Jagannath Munda @Sidu

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Petitioner

Mr. B.K.Sharma, Advocate, S.K.Singh, Advocate
Mr. J.Pradhan, Advocate, Mr. I.Tripathy, Advocate
Mr. D.Ray, Advocate

-Versus-

State of Odisha

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Opposite Party

Mr. Tapas Kumar Praharaj, SC

CORAM:
MR. JUSTICE R.K. PATTANAİK

ORDER
18.11.2022

Order No.

04.

1. Heard learned counsel for the petitioner and learned counsel for the State.
2. The present petition under Section 482 Cr.P.C. is filed by the petitioner challenging the impugned order dated 28th July, 2022 passed in C.T. Case No. 50 of 2018 by the learned Additional Sessions Judge-cum-Special Court under POCSO Act, Baripada whereby an application under Section 311 Cr.P.C. to recall the victim, namely, P.W. 2 for the purpose of further cross-examination was declined.
3. Learned counsel for the petitioner submits that such recall of P.W. 2 being a material witness of the prosecution should be allowed, however, the learned court below did not consider and appreciate it in proper perspective and ultimately passed the impugned order dated 28th July, 2022 vide Anneuxre-3 which is, therefore, liable to be set

aside in the interest of justice with a consequential direction for her recall and further cross-examination. It is further submitted that some relevant questions are to be put to P.W.2 with regard to facts related to the spot and as to the nature of overt acts committed by the petitioner and therefore, recall of P.W.2 is highly essential, the fact which was lost sight of by the learned Special court and hence, the impugned order under Anneuxre-3 calls for interference. While contending so, learned counsel for the petitioner relies on a decision of the Apex Court in **Varsha Garg Vrs. The State of Madhya Pradesh & Others** reported in **2022 Live Law(SC) 662** and another decision of Madras High Court in a case of **Sankar Vrs. State Represented through The Inspector of Police, Tirunelveli Town Police Station, Tirunelveli District** decided in **CRL. O.P. (MD) No. 11427 of 2022** and disposed of 28th June, 2022 to contend that recall of P.W. 2 should be allowed, inasmuch as, such recall is permissible in terms of Section 311 Cr.P.C. at any stage of the proceeding and so as to advance the cause of justice which has been highlighted upon in the decisions (supra).

4. Mr. Praharaj learned counsel for the State on the other hand submits that such a request for recall and further cross-examination of P.W. 2 has been prayed for almost after three years and there has been inordinate delay and that apart, no any ground is shown from the side of the petitioner for the said purpose and hence, there is no need of any such further cross-examination of the victim and as such, the learned Special court did not commit any wrong or error and rightly rejected the plea vide Anneuxre-3. While advancing such an argument, Mr. Praharaj, learned counsel for the State cites a decision of the Supreme Court in **Vinod Kumar Versus State of Punjab** reported in **(2015) 3 SCC 220** wherein it has been held and observed that inordinate delay in applying recall and any such move if allowed

results in delay in disposal of cases discussing therein the duty of the courts to ensure that not only the interest of the accused is to be protected but also that of the society and collective interest or all involved need to be safeguarded.

5. In the present case, P.W. 2, namely, victim was examined, cross-examined and discharged on 9th April, 2019. Almost after three years, an application under Section 311 Cr.P.C. was moved by the petitioner to recall P.W.2 for her cross-examination on the ground that certain questions with regard to the incident happened at the spot and concerning the overt acts committed by the petitioner are to be confronted which was rejected vide Annexure-3. The Court perused the copy of application under Section 311 Cr.P.C. filed before the learned Special court while seeking recall of P.W.2. In fact, the parties were known to each other and have had prior acquaintance before lodging of the report. The purpose for recall of P.W.2 is that the defense is required to confront her certain aspects vis-a-vis the incident and the nature of overt acts committed by the petitioner. However, the Court finds that on such a general plea, the recall of P.W. 2 has been prayed for by the defense which cannot be allowed. In fact, P.W. 2 was cross-examined in full and finally, discharged in the year 2019. A copy of the deposition is at Annexure-1 and the same is also perused. From the cross-examination of P.W. 2, the Court finds that she has been confronted with all such questions relevant to the case by the defense before being discharged.

6. Considering the nature of evidence received from the victim, namely, P.W.2 and that she was cross-examined at length and discharged long back in 2015, there is no reason for the Court to exercise any such discretion allowing her recall. That apart, for delay of three years, a prayer for recall of P.W. 2 on a vague plea cannot

also be permitted. In **Vinod Kumar** (supra), the Apex Court observed that unnecessarily recall and cross-examination of witnesses should be discouraged since it would lead to undue delay in disposal of cases before the trial court. In the instant case, the petitioner filed the application nearly three years after the examination of P.W. 2 and that too when, she was cross fully examined and discharged. No specific ground as well is made out for the said purpose which dissuades the Court from allowing such a prayer of recall. The citations which have been referred to by the learned counsel for the petitioner are of no relevance to the present case, so to say. In other words, the Court does not find any reason or justifiable ground to interfere with the impugned order under Anneuxre-3 which is as per law.

7. Accordingly, it is ordered.
8. In the result, the CRLMC stands dismissed.

(R.K. Pattanaik)
Judge