

IN THE HIGH COURT OF ORISSA AT CUTTACK
CRLMC No. 2586 of 2022

Ram Kumar Kanda

....

Petitioner

Mr. H.B.Dash, Advocate

Versus

State of Odisha

....

Opposite Party

Mr. J. Katikia, AGA

CORAM:

JUSTICE SAVITRI RATHO

ORDER

10.11.2022

Order No.

01.

(Through hybrid mode)

1. This application under Section 482 Cr.P.C. has been filed challenging the order dated 19.08.2022 passed in CT Case No. 28 of 2016, by the Assistant Sessions Judge (Womens court), Bargarh rejecting the application of the petitioner filed under Section 311 of the Code of Criminal Procedure (in short “ Cr.P.C.”) to recall PW-4 for further cross-examination.

2. Perused the petition filed under Section 311 of Cr.P.C. which has been annexed as Annexure-3 to this petition as well as the order dated 20.08.2016. The questions, the petitioner proposed to ask the PW-4 have not been mentioned in the petition but it has been stated in the petition that during cross examination of P.W 4 , questions on certain vital points have not been put to her which may affect the substratum of the case and may prejudice the accused.

3. Although it is not the mandate of Section – 311 of the Cr.P.C that the questions proposed to be asked should be mentioned in the petition, but mentioning the questions or stating about the type of questions proposed to be asked, enable the trial Court to examine if such questions are necessary to be asked for a just decision in the case or failure to ask the same would prejudice the accused. If irrelevant and unnecessary questions are put to a witness, it results in harassment of the witness and wastage of valuable time of the Court. Therefore, I do not find any infirmity in the impugned order.

4. But keeping in mind the mandate of Section – 311 of the Cr.P.C and the settled position of law that such power is to be exercised to enable the Court to determine the truth and to render a just decision after discovering all relevant facts and obtaining proper proof of such facts; and considering the fact that the examination of other witnesses is still going on, so recall of P.W 4 would not result in delaying the trial, this application under Section 482 Cr.P.C. is disposed of granting liberty to the petitioner to file a fresh application under Section 311 Cr.P.C. mentioning the specific questions which he proposes to ask to PW-4. If such application is filed by 25.11.2022, the same shall be considered by the learned trial court in accordance with law on its own merit without being prejudiced by the earlier order of rejection.

5. This CRLMC is disposed of with the aforesaid observation.

6. Urgent certified copy be granted on proper application.

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(Savitri Ratho)
Judge