

IN THE HIGH COURT OF ORISSA AT CUTTACK
CRLMC No.2679 of 2022

Ashok Kumar Mohanty

....

Petitioner

Mr.A.K.Nayak, Advocate

Versus

Mohan Dhar Pradhan

....

Opposite Party

CORAM:

JUSTICE SAVITRI RATHO

ORDER

07.12.2022

Order No.

01.

(Through hybrid mode)

1. This application under Section 482 of Cr.P.C. has been filed by the petitioner challenging the order dated 03.09.2022 passed by the learned J.M.F.C., Bhubaneswar in ICC No.6121 of 2013, rejecting the application of the petitioner filed under Section 311 Code of Criminal Procedure (in short “Cr.P.C”), to recall P.W.1 for further cross-examination.

2. Mr. A.K.Nayak, learned counsel for the petitioner submits that the impugned order is liable after making his submission, prays for some time to examine the provision under Section 311 Cr.P.C. and make his submission.

3. Section – 311 of the Cr.P.C is extracted below :

Section -311 Cr.P.C . Power to summon material witness, or examine person present: Any Court may, at any stage of any inquiry, trial or other proceeding under this Code, summon any person as a witness, or examine any person in attendance, though not summoned as a witness, or recall and re- examine any person already examined; and the Court shall summon and examine or

recall and re-examine any such person if his evidence appears to it to be essential to the just decision of the case.

4. The learned trial court after hearing the submissions of both sides has by a well reasoned order dismissed the petition, holding as follows :

...“Heard both sides. Perused the case record and documents attached to it. It reveals from the case record that the complainant P.W.1 has been examined, cross-examined and discharged. The further examination in chief was completed in dtd. 16.7.2014 and cross examination was first deferred to the next date. Consequently, on dtd. 7.8.2014, the witness was cross-examined and again it was deferred to the next date by the prayer of the Ld. Defence Counsel. Further on dtd. 13. 1.2015 the cross examination resumed, but however it was deferred to the next date, and due to failure of the defence to cross examine the witness P.W.1 who was very much present on that day of posting, the cross examination was declined and the case record was posted for accused statement on dtd. 7.11.2016. Further vide order dtd. 5.8.2017 the recall petition of P.W.1 was rejected on the ground that there is no further necessary to cross examine P.W.1 for just and effective adjudication of this case. Finally on dtd. 4.4.2019 the accused statement was recorded and by rejecting the time petition for Defence evidence, on dtd. 27.8.2019 the defence evidence was closed and same then the case record was posted for argument. Further on dtd. 12.9.2019 the Ld. Counsel for the complainant is not leaving a reason to cause delay on their behalf. On careful scrutiny of this case record, it can be seen that no specific questionnaire has been filed by the

Ld. Counsel for the accused person as to in what extend he intends to cross examine P.W.1 on being recalled. Further enough and sufficient opportunity has been given to the Ld. Defence for cross examine, but it is apparent from the earlier orders that he has failed to mould the same on his benefit.

Therefore, by considering the circumstances and in the interest of justice at this stage, this Court is not inclined to allow the petition. Hence, the petition to recall P.W.1 stands rejected. Put up on dtd. 17.9.22 for further argument.”

5. After carefully examining the well reasoned order passed by the learned J.M.F.C., Bhubaneswar, I do not find any ground to interfere with the same.

6. Mr. A.K.Nayak, learned counsel for the petitioner submits that liberty may be granted to the petitioner to file a fresh application under Section 311 of Cr.P.C. indicating the questions proposed to be put to the witness. No liberty is required to be granted as law permits for filing of such application.

7. The CRLMC is accordingly dismissed.

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(Savitri Ratho)
Judge

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