

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLMC No. 2857 of 2022

Pabitra Mohan Nayak

....

Petitioner

Mr. Arijeet Mishra, Advocate

-Versus-

State of Odisha (Vig.)

....

Opposite Party

Mr. Niranjana Maharana, ASC

CORAM:

MR. JUSTICE R.K. PATTANAİK

ORDER

19.10.2022

Order No.

01. 1. Heard learned counsel for the petitioner and learned counsel for the State.
2. Instant petition under Section 482 Cr.P.C. is filed by the petitioner assailing the impugned order dated 21st September, 2022 passed in T.R. Case No.50 of 2011 by the learned Special Judge (Vigilance), Angul whereby an application under Section 311 Cr.P.C. moved for recall of P.W.s 1, 2, 3 and 4 was rejected.
3. Learned counsel for the petitioner submits that P.W.s. 2, 3 & 4 have not at all been cross-examined by the petitioner, whereas, P.W.1 was cross-examined and discharged but he is required to be recalled in terms of Section 311 of Cr.P.C. to put him some relevant questions which have been indicated in Annexure-3.
4. Mr. Maharana, learned counsel for the Vigilance Department on the other hand objects to the recall and further cross-examination on the ground that said witness was examined and cross-examined in full and thereafter, discharged. A formal objection is received from Mr.

Maharana, learned counsel for the Vigilance Department so far as recall of other three witnesses, namely, P.W.s 2, 3 & 4.

5. The Court perused the application under Section 311 Cr.P.C., a copy of which is at Annexure-3 series. A questionnaire which is provided therein deals with not so relevant aspects of the case and therefore, the Court is of the view that the court below did not err in rejecting the application and therefore, it is not inclined to interfere with regard to recall of P.W. 1 and to that extent, the impugned order under Anneuxre-1 is not to be disturbed. However, since P.W.s 2, 3 & 4 have not been cross-examined at all and the fact which is not disputed by Mr. Maharana, learned counsel for the Vigilance Department, the Court is of the view that an opportunity should be provided to the petitioner for the same. In other words, the Court is of the conclusion that the learned court below ought to have allowed recall and cross-examination of P.Ws.2, 3 & 4 exercising jurisdiction in terms of Section 311 Cr.P.C. which he did not do.

6. Accordingly, it is ordered.

7. In the result, CRLMC stands allowed to the extent indicated above. Consequently, the impugned order under Anneuxre-4 passed in T.R. Case No. 50 of 2011 is partly set aside. As a necessary corollary, the learned Special Judge (Vigilance), Angul is directed to ensure recall of P.W.s 2,3 & 4 for the purpose of cross-examination by the petitioner.

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

(R.K. Pattanaik)
Judge