

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLMC No. 2865 of 2022

Chandan Kumar Mohanty @ Bapun Petitioner
Mr. R.N.Parija, Advocate

-Versus-

State of Odisha & Another Opposite Parties
Mr. Tapas Kumar Praharaj, SC

CORAM:
MR. JUSTICE R.K. PATTANAİK

ORDER
04.11.2022

Order No.

- 01.
1. Heard learned counsel for the petitioner and Mr. Praharaj, learned counsel for the State -opposite party No.1.
 2. Instant petition under Section 482 of Cr.P.C. is filed challenging the impugned order under Annexure-1 passed by the learned Adhoc Additional Sessions Judge (FTSC), Balasore in connection with S.T. Case No. 179 of 2019 whereby recall and cross-examination of P.W.3, namely, the victim was disallowed.
 3. A copy of the impugned order is at Annexure-1 and the same is perused.
 4. Learned counsel for the petitioner submits that P.W.3 has not been cross-examined at all as in fact on the date of examination, an application for time was moved but the same was rejected and then the witness was discharged. It is further submitted that an application under Section 311 Cr.P.C. was filed on 30th September, 2022 but the learned court below rejected the same under the impugned order Annexure-1. Hence, it is contended that the petitioner should be provided an opportunity to recall and cross-

examine P.W.3, who is the victim as well as the informant in the present case.

5. Mr. Praharaj, learned counsel for the State fairly concedes that there has been no delay in applying for recall of P.W. 3 from the side of the petitioner.

6. Considering the above facts, the fact that P.W.3 was not cross-examined rather was discharged by the learned court below without it, an opportunity should be provided to the petitioner to recall and cross-examine her. It is an invaluable right of the petitioner to cross-examine the material witness which cannot be taken away or denied and therefore, the impugned order under Annexure-1, in the considered view of the court, is liable to be set aside.

7. Accordingly, it is ordered.

8. In the result, CRLMC stands allowed. Consequently, the impugned order under Anneuxre-1 is hereby quashed with a direction to the learned Adhoc Additional Sessions Judge (FTSC), Balasore to recall P.W.3 for the purpose of cross-examination by the defence and to fix up a date for the said purpose and ensure that the examination of said witness is concluded on a single date without further adjournment.

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

(R.K. Pattanaik)
Judge