

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLMC No. 2949 of 2022

Pintu @ Pravat Sahu

....
Mr. Amlan Shakti Paul, Advocate

Petitioner

-Versus-

State of Odisha

....
Mr. T.K. Praharaj, SC

Opposite Party

CORAM:
MR. JUSTICE R.K. PATTANAİK

ORDER
04.11.2022

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. by the petitioner is filed challenging the order dated 11th July, 2022 passed by the learned Additional District Judge-cum-Special Court under POCSO Act, Angul in Special (POCSO) Case No.52 of 2021 arising out of Angul P.S. Case No.394 of 2021 on the grounds stated therein.
 3. Petitioner has been chargesheeted under Section 376(2)(n)/6(1) of POCSO Act and Section 366-A of IPC, a copy of which is at Annexure-2 and the same is perused by the Court.
 4. Learned counsel for the petitioner submits that the victim, namely, P.W. 1 and the other witness, such as, P.W. 2, who is the mother of P.W. 1, could not be cross-examined due to absence of the conducting counsel before the court below and they were accordingly discharged and while claiming so, he refers to copies of the depositions as at Annexure-2.

5. Mr.Praharaj, learned Standing Counsel for the State submits that P.W.1 is a vulnerable witness and victim of sexual offence and therefore, the impugned order under Annexure-4 is justified.

6. The Court perused the impugned order dated 11th July 2022 whereby the court below declined to recall P.Ws.1 and 2 for the purpose of cross-examination by referring to the provision of the POCSO Act which imposes restriction vis-à-vis examination of child witnesses. In the present case, P.W. 1 has been examined and cross-examined on 18th April, 2022 and discharged on the same day. It is not a case where witnesses have been repeatedly recalled for cross-examination. No doubt there is some delay in applying for recall. Since the conducting counsel was absent on 18th April, 2022, the witnesses have been discharged without cross-examination. According to the Court, the valuable right of defence cannot be taken away, inasmuch as, the petitioner should be provided an opportunity to cross-examine P.Ws.1 and 2, who have not been cross-examined at all and discharged on the same date. Accordingly, it is ordered.

7. In the result, the CRLMC stands allowed. As a corollary, the impugned order dated 11th July, 2022 passed by the learned Additional District Judge-cum-Special Court under POCSO Act, Angul in Special (POCSO) Case No.52 of 2021 arising out of Angul P.S. Case No.394 of 2021 is hereby quashed. Consequently, the petitioner is allowed to recall and cross-examine P.Ws.1 and 2 on the date to be fixed by the court below and ensure discharge of the said witnesses on the same date without any further adjournment.

8. Issue urgent certified copy of this order as per rules.

(R.K. Pattanaik)
Judge