

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLMC No.3241 of 2022

Jaga Mohapatra @ Jagannath Mishra

.... Petitioner
Mr. A.Pattanaik, Advocate

-Versus-

State of Odisha

.... Opposite Party
Mr.Sitikanta Mishra, ASC

CORAM:
MR. JUSTICE R.K. PATTANAIAK

ORDER
17.11.2022

Order No.

- 01.
1. Heard learned counsel for the petitioner and learned counsel for the State-opposite party.
 2. Learned counsel for the petitioner submits that recall of P.W. 3, namely, victim was rejected by the learned court below vide impugned order dated 12th October, 2022 which should have been allowed since because she is a material witness and the offence involved prescribes sentence not less than 10 years. It is further submitted that some relevant questions which have been detailed in application under Section 311 Cr.P.C. are to be put to the victim and therefore, her recall and further cross-examination is absolutely necessary in the interest of justice which is objected to by Mr. Mishra, learned counsel for the State on the ground that similar request was made earlier with the same prayer and it was rejected

which is evident from the impugned order itself and the rejection is on the ground that the intention and purpose was to delay the disposal of the case.

3. The Court perused the impugned order copy of which is at Annexure-1 and also perused the copy of the application under Section 311 Cr.P.C. as at Annexure-2.

4. In the instant case, the victim, namely, P.W.3 is aged about 8 years and she has been subjected to sexual assault allegedly in the hands of the petitioner. From the impugned order, it is made to suggest that P.W. 3 was examined and cross-examined and thereafter discharged. A copy of the deposition of P.W. 3 is produced by the learned counsel for the petitioner in Court today. In fact, P.W. 3 was examined and cross-examined on 13th May, 2022 and thereafter, she was discharged.

5. Learned counsel for the petitioner submits that some more questions are to be put to her which is relevant. However, considering the questionnaire which is found in the application under Section 311 Cr.P.C., the Court finds that they are not so relevant. That apart, P.W. 3 has been cross-examined in full and thereafter discharged. On an earlier occasion, a similar request was made by the petitioner which stood rejected, the fact which is not denied by the learned counsel for the petitioner.

6. Having regard to the above facts and in view of Section 33(5) of the POCSO Act which lays down restriction for repeated recall and examination of the victims under the said Act, the Court is of the view

that the prayer for recall of P.W.3 which has been rejected by the learned court below is justified and does not call for any interference.

7. Accordingly, it is ordered.
8. In the result, the CRLMC stands dismissed.

(R.K. Pattanaik)
Judge

