

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLMC No. 3323 of 2022

Debu Murmu

....  
Mr. Suryakanta Dwibedi, Advocate

**Petitioner**

-Versus-

State of Odisha

....  
Mr. Tapas Kumar Praharaj, SC for State

**Opposite Party**

CORAM:  
MR. JUSTICE R.K. PATTANAİK

ORDER  
11.11.2022

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. is filed assailing the impugned order dated 20<sup>th</sup> July, 2022 passed by the learned Adhoc Additional Sessions Judge (FTSC), Balasore in Special Case No.17 of 2019 on the grounds stated therein.
  3. A copy of the impugned order as at Annexure-1 and copies of the depositions of P.W.2 and P.W.4 which are at Annexure-2 have been perused by this Court.
  4. Learned counsel for the petitioner submits that the court below allowed recall and cross-examination of P.W.3, a police officer, however, declined in respect of P.Ws.2 and 4. It is contended that P.W.4 is the victim, whereas, P.W. 2 is her mother.

5. It appears that learned counsel for the petitioner does not press recall of P.W. 2, namely, the mother of the victim, who was examined and discharged but without being cross-examined. As per the contention, after four days of examination of P.W.4, application under Section 311 Cr.P.C. was filed but learned court below vide order under Annexure-1 rejected the same which is unjustified. A strong objection is received from the side of the State justifying the impugned order. The copies of the depositions of P.Ws.2 and 4 are at Annexure-2 series, which are perused. Though P.W.4 was examined but could not be cross-examined and the reason being shown that the conducting counsel was absent by then despite repeated calls.

6. Having regard to the facts and submissions of learned counsel for petitioner and State, the Court is of the view that P.W.4 is the victim who has not at all been cross-examined which is on account of default of the conducting counsel for the petitioner and there has been a delay of 4 days after her examination and discharge that an application under Section 311 Cr.P.C. was moved.

7. Having regard to the above facts, the Court is of the view that learned court below could not have rejected such recall application in respect of P.W.4 by referring to the decision of Supreme Court in the case of **Vinod Kumar Vrs. State of Punjab (2015) 3 SCC 220** as it does not apply to the case at hand and is referable to inordinate delay in completion of trial. It is not a case that there is a gross delay in applying for recall of P.W. 4, which was moved immediately after her discharge. In the considered view of the Court, recall and cross-examination of P.W. 4 should be allowed as the invaluable right of the petitioner to cross-examine a material witness cannot be taken away or infringed upon in such manner. Accordingly, it is ordered.

8. As a corollary, the CRLMC stands allowed. Consequently, the impugned order under Annexure-1 in Spl. Case No.17 of 2019

passed by the learned Adhoc Addl. Sessions Judge (FTSC), Balasore is partly set aside with a direction that only P.W. 4 is to be recalled for cross-examination by the defence which shall be accomplished on the date of her examination itself without any adjournment allowed for the said purpose.

9. A copy of the above order be issued forthwith to the learned counsel for the petitioner and another is directed to be sent to the court below for compliance.

(R.K. Pattanaik)  
Judge

U.K.Sahoo

