

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLMC No.2566 of 2021

Sri SanjayKumar Naik

....

Petitioner

-versus-

State of Orissa

....

Opposite Party

CORAM: JUSTICE S. PUJAHARI

ORDER

02.08.2022

Order

No.

02.

1. This matter is taken up through hybrid mode.
2. This application under Section 482 of Cr.P.C. has been filed by the Petitioner with a prayer to quash the order dated 25th November, 2011 passed by the learned Special Judge (Vigilance), Baripada in VGR No.12 of 2017 (T.C. No.88/2018) wherein the petition under Section 311 of Cr.P.C. filed by him to recall P.Ws.1 to 3 for further cross-examination was rejected.
3. Heard the learned counsel for the Petitioner and the learned counsel appearing for the Vigilance Department.
4. It appears that the Petitioner filed a petition under Section 311 of Cr.P.C. before the trial court for further cross-examination of the P.Ws. 1 to 3 after closure of their

evidence on the ground that the previous counsel, who is conducting the case forgotten to ask the vital questions. Those questions were specifically mentioned in the petition filed. The trial court dealing with the matter, especially the fact that change of counsel is no ground to recall the witnesses in view of the law laid down in the case of ***A.G. vrs. Shiv Kumar Yadav, reported in AIR 2015 SC 3501.***

5. No doubt, change of counsel cannot be a ground to recall the witnesses already examined, but what is the material in question is sought to be asked on recall, the Court, therefore, while addressing the petition under Section 311 of Cr.P.C. must render its finding whether those questions sought be asked are relevant and the same is essential for just decision of the case or not.

6. As it appears, from the impugned order, the same having not been addressed, this Court set aside the impugned order and remit back the matter to the Special Judge (Vigilance) to address the prayer in the light of the law laid down for recall of witnesses already examined in exercise of power under Section 311 of Cr.P.C. Such exercise must be completed not later than ten days of receipt of copy of this order. The Petitioner shall produce the copy of this order before the trial court not later than three weeks hence.

7. A free copy of this order be given to the learned counsel appearing for the Vigilance Department.

(S. Pujahari)
Judge

DA

