

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLMC No.3852 of 2022

Arun Kumar Rout and Others

.... Petitioners
Mr. M.B. Das, Advocate

-Versus-

State of Odisha and Another

.... Opposite Parties
Mr. S. Mishra, ASC

CORAM:
MR. JUSTICE R.K. PATTANAİK

ORDER
08.12.2022

Order
No.
01.

1. Defect be ignored.
2. Heard learned counsel for the petitioners and learned counsel for the State.
3. Instant petition under Section 482 Cr.P.C is at the behest of the petitioners assailing the correctness and legality of the impugned order dated 24th November, 2022 passed by the learned Special Judge under SC & ST (PoA) Act, Cuttack in connection with S.T. Case No.214 of 2015 whereby an application for recall of P.W.5 besides production of record in S.T. Case No.237 of 2015 was rejected.
4. Learned counsel for the petitioners submits that the recall of P.W.5 is necessary to confront him relevant questions which are detailed in the application under Section 311 Cr.P.C. which is with regard to enquiry vis-à-vis the caste of opposite party No.2 etc. It is further submitted that in S.T. Case No.237 of 2015, a contrary view was held vis-à-vis the caste of the son of opposite party No.2 as was

deposed to the court which therefore ended in acquittal and therefore, the relevant record is sought to be produced and for the said purpose, another application under Section 91 Cr.P.C. was moved. According to the learned counsel for the petitioners neither recall of P.W.5 was allowed nor production of case record in S.T. Case No.237 of 2015 and hence, the challenge before this Court.

5. Learned counsel for the petitioners submits that P.W.5 was examined, cross-examined and discharged in 2007 but since caste of opposite party No.2 is in questioned, his recall and further cross-examination is absolutely necessary. It is claimed that P.W.5 being the Tahasildar is to be cross-examined further with regard to the caste of opposite party No.2 and as to the enquiry and inspection he had carried out and whether any such documents said to have been verified by him or other officials on his instruction. The learned court below rejected the said application (Annexure-2) under Annexure-3. Similarly, application under Section 91 Cr.P.C., a copy of which is at Annexure-2-A, was moved for production of the record in S.T. Case No.305 of 2006 but the same was denied. It is contended that unless P.W.5 is recalled and record in S.T. Case No.237 of 2015 (S.T. Case No.305 of 2006) is produced before the court below, the petitioners would be highly prejudiced but then the said fact was lost sight of and the impugned order under Annexure-3 was passed.

6. Mr. Mishra, learned counsel for the State on the other hand submits that the case is posted to 12th December, 2022 for argument. It is claimed that at the end of the trial, such applications have been moved by the petitioners to recall P.W.5 and call for record in S.T. Case No.237 of 2015 (S.T. Case No.305 of 2006) which were rightly rejected.

7. Admittedly, P.W.5 was examined long back almost 15 years before and in so far as the relevant questions which are detailed in Annexure-2 are concerned, it can be met and would suffice in the event the relevant documents in S.T. Case No.237 of 2015 (S.T. Case No.305 of 2006) are made available to the learned Special court. In the considered opinion of the Court, the petitioners could obtain certify copies of all the relevant documents vis-à-vis S.T. Case No.237 of 2015 (S.T. Case No.305 of 2006) and produced before the learned court below for its examination and consideration. If such liberty is allowed, there would not be a need for recall of P.W.5 for further cross-examination, which any case, the Court is not inclined to permit as in the meantime fifteen years of gone back and with an inordinate delay, the petitioner applied for the same.

8. Considering the fact that the caste of opposite party No.2 is in dispute and in a separate proceeding in S.T. Case No.305 of 2006, a different view was expressed with regard to the caste of her son, the Court is of the conclusion that the petitioners should only be provided an opportunity to collect the certified copies of relevant documents in S.T. Case No.237 of 2015 (S.T. Case No.305 of 2006) and to produce it before the learned court below and exhibited from their side which would rather serve the purpose and meet the ends of justice.

9. Accordingly, it is ordered.

10. in the result, CRLMC stands partly allowed. As a necessary corollary, the impugned order under Annexure-3 is set aside to the extent indicated above.

11. Consequently, the petitioners are granted liberty to collect all the relevant documents in S.T. Case No.237 of 2015 (S.T. Case No.305 of 2006) and to cause its production before the court of learned Special Judge under SC & ST (PoA) Act, Cuttack in S.T. Case No.214 of 2015 and in the event, any such documents are produced before the learned court below, it shall allow them to exhibit the same and thereafter, to proceed and dispose of the case as per and in accordance with law.

12. Urgent certified copy of this order be granted as per rules.

(R.K. Pattanaik)
Judge



TUDU