

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.6073 of 2022

Arising Out of PS. Case No.-516 Year-2019 Thana- ISLAMPUR District- Nalanda

PRAMOD KUMAR Son of Late Dular Mahto Resident of Village - Danapur
Paithna, P.s.- Islampur, Distt.- Nalanda.

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Madan Prasad Singh No.2, Advocate
For the Opposite Party/s : Mr. Umeshanand Pandit, A.P.P.

CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR SINGH
ORAL ORDER

2 28-02-2024 Heard learned counsel for the petitioner and Mr.
Umeshanand Pandit, learned A.P.P. for the State.

2. This application has been filed for quashing order dated 04.10.2022 passed in G.R. No. 5964/2019, POCSO Case No. 114 of 2019 arising out of Islampur P. S. Case No. 516 of 119 by the Additional Sessions Judge-VII-cum-Special Judge, POCSO, Biharsharif at Nalanda rejecting the petitioner's petition dated 24.02.2021 to recall for further cross examination of P.W. 1 and 2.

3. The prosecution case, in brief, is that on 27.10.2019 at about 2:30 pm, while the informant was not present at his house, this petitioner entered into the house and caught one of his daughters aged about 13 years and started molesting her and dragging her in the room and when the other daughter came, he



threatened both of them and fled away.

4. Learned counsel for the petitioner submits that due to inadvertence and laches on the part of the counsel for the petitioner, P.W. 1 and 2 could not be properly examined and therefore an application dated 24.02.2021 was filed by the petitioner to recall the witnesses for re-examination. He next submits that the time of occurrence is 2:30 PM in the F.I.R. and the victim in her statement under Section 161 Cr.P.C. has given time of the occurrence as 1:10 PM which is contradictory statement. In the same way, informant has also given contradictory statement in the F.I.R., in the statement under Section 161 Cr.P.C. and during trial. Lastly, he submits that the application filed by the petitioner for recalling the witnesses have been rejected without application of mind in mechanical way as such, the impugned order is fit to be quashed.

5. Learned A.P.P. for the State opposes the prayer made on behalf of the petitioner and submits that there is no illegality or irregularity in the impugned order. Trial court has rightly dismissed the application which was filed for re-examining the witnesses only with a view to delay the trial. Lastly, he submits that in view of the legislative mandate contained under Section 33 (5) of the Protection of Children



from Sexual Offences Act, the child is not required to be called repeatedly to testify in the court. **Section 33 (5) of the Protection of Children from Sexual Offences Act** reads as:

“(5) The Special Court shall ensure that the child is not called repeatedly to testify in the court.”

6. On perusal of the impugned order dated 04.10.2022 passed by the Additional Sessions Judge-VII-cum-Special Judge, POCSO, Biharsharif at Nalanda it is apparent that both the witnesses were cross-examined in detail and at length by the defence side. P.W. 1, the victim girl was cross-examined for a day and P.W. 2 was also cross-examined for two days as such, it cannot be said that they did not get enough opportunity to cross-examine the victim.

7. Recently Hon’ble Apex Court in the case of **Ag v. Shiv Kumar Yadav & Anr** reported in AIR 2015 SC 3501 has dealt with the provision of Section 311 Cr.P.C. in detail. In this case, the issue raised for consideration was whether recall of witnesses, at the stage when statement of accused has been recorded could be allowed on the plea that the defence counsel was not competent and had not effectively cross-examined the witnesses. The Hon’ble Apex Court disapproved the view and observed that on this ground witnesses cannot be recalled and



re-examined.

8. From perusal of the impugned order it is apparent that the accused had opted counsel of his own choice and was given due opportunity and had duly conducted cross-examination. He was under no handicap. Expeditious trial in a heinous offence as is alleged in the present case is in the interests of justice. In the opinion of this court, trial court has rightly rejected the application of the petitioner for re-examining the witnesses. At this stage, court has to keep in mind not only the need for giving fair opportunity to the accused but also the need for ensuring that the victim of the crime is not unduly harassed. There is no basis for holding that any prejudice will be caused to the accused unless the witnesses are recalled. As such, there is neither any patent error in the approach adopted by the trial court rejecting the prayer for recall nor any clear injustice if such prayer is not granted.

9. Accordingly, this application stands dismissed.

(Prabhat Kumar Singh, J)

Navya/-

U		T	
---	--	---	--

