HIGH COURT OF UTTARAKHAND AT NAINITAL

Criminal Revision No.874 of 2024

Durga Bahadur Sen .....Revisionist

Versus

State of Uttarakhand .....Respondent

Present:-

Mr. K.K. Harbola, Advocate for the revisionist.
Mr. Vipul Painuly, Brief Holder for the State.

JUDGMENT

Hon'ble Ravindra Maithani, J. (Oral)

The challenge in this revision is made to an order dated 04.11.2024, passed in Special Sessions Trial No. 82 of 2024, State Vs. Durga Bahadur Sen, by the court of Special Judge (POCSO)/Additional District Judge, Dehradun, ("the case"). By it, an application under Section 311 of the Code of Criminal Procedure, 1973 ("the Code") filed by the revisionist has been rejected.

2. Heard learned counsel for the parties and perused the record.

3. In the case 18.09.2024 was fixed for prosecution evidence. On that date, counsel appearing for the revisionist withdrew her *vakalatnama*. New advocate put his appearance. He cross examined the witness, but for remaining cross examination, the matter was adjourned post lunch. Post lunch when the counsel for the revisionist did not appear, the court closed the opportunity and fixed

01.10.2024 for remaining prosecution evidence. On the same date, an application was filed on behalf of the revisionist seeking permission to cross examine the witness, which was rejected by the impugned order.

4. Learned counsel for the revisionist would submit that the counsel appointed by the revisionist had withdrew her *vakalatnama*. The revisionist did engage another lawyer, who already had a case in another court. He did partial cross examination and could not conclude on time. By the time he returned to the court, the opportunity was closed.

5. Learned State counsel does not dispute this factual narration. It is, in fact, evident from the bare perusal of the impugned order.

6. Having considered the entirety of facts, this Court is of the view that the court below ought to have allowed the application under Section 311 of the Code filed by the revisionist. An interference of the Court is required. Accordingly, the impugned order deserves to be set aside and the revision allowed.

7. The revision is allowed. The impugned order dated 04.11.2024 is set aside.

8. Application under Section 311 of the Code filed by the revisionist is allowed.

9. The Court below shall fix a date for cross examination of the victim. On that date, she may be cross examined on behalf of the revisionist.

(Ravindra Maithani, J)
12.12.2024

Jitendra