

**IN THE HIGH COURT OF JUDICATURE AT PATNA  
CRIMINAL MISCELLANEOUS No.16016 of 2024**

Arising Out of PS. Case No.-19 Year-2021 Thana- MAHILA PS District- Gopalganj

Butan Chauhan S/o Sri Lal Chauhan @ Srilal Mahto @ Sri Mahato Lal R/o  
Village- Mangalahi, P.S.- Phulwariya Sripur O.P Dist- Gopalganj

... .. Petitioner/s

Versus

1. The State of Bihar
2. Priyanka Kumari D/o- Vinod Ram Village- Sawanahi Brit P.S.- Gopalpur  
Dist- Gopalganj

... .. Opposite Party/s

**Appearance :**

For the Petitioner/s : Mr. Pankaj Kumar Dubey, Advocate  
For the Opposite Party/s : Mr. Binay Krishna, A.P.P.

**CORAM: HONOURABLE MR. JUSTICE SOURENDRA PANDEY  
ORAL ORDER**

2      04-08-2025                      Heard learned counsel for the petitioner and learned A.P.P.  
for the State.

2. The present application has been filed for quashing of order dated 04.12.2023 in connection with Gopalganj POCSO Case No. 62/2021 arising out of Gopalganj Mahila P.S. Case No. 19 of 2021 passed by learned Additional Session Judge VIth Cum-Special Judge POCSO, Gopalganj.

3. Learned counsel for the petitioner submits that the deposition of the victim was recorded on 06.04.2022, wherein a very pertinent question with regard to the identification of the petitioner/sole accused, could not be put to the victim during the course of examination and as such, a petition dated 18.10.2023 was filed for re-call of the victim for re-cross examination, however, the learned Court below by the impugned order, has rejected the same which is bad in law as it was a very pertinent question which needed



to be answered as the petitioner was the sole accused.

4. It has further been submitted that as per the provisions of Section 311, the Court can recall or re-examine any person who had already been examined at any stage of the trial, if it is found that the said examination is essential for just decision of the case. It has next been submitted that the petitioner would suffer irreparable loss if the petitioner is not granted the liberty to re-examine the victim.

5. Learned A.P.P. for the State has vehemently opposed the prayer and stated that the application of the petitioner stating therein that the petitioner had ample opportunity to cross-examine the victim and there is no changed circumstance which has been shown by the petitioner for which the said victim/witness be recalled for. It has further been submitted by learned A.P.P. for the State that it is a settled law that the witnesses cannot be called in order to paper over defence lapses or serve as a strategy for patching up evidentiary gaps and in such cases, if the petitioner had enough opportunity of cross-examining the victim, P.W.-5 there was no occasion to make such application. It has also been submitted that admittedly, the application was filed after more than one and a half years which also goes on to show that the purpose for making such application was to delay the disposal of the trial and since this case was under POCSO Act and the victim who has already undergone torture, would be further subjected to agonies of trial.

6. Considering the aforesaid submissions and taking into



account the fact that the petitioner had ample opportunity of examining the victim while she was cross-examined on behalf of the petitioner and moreover, the application for recall was filed after more than one and a half years, without any explanation for the inordinate delay, this Court has reasons to believe that the intention behind such delay appears to be aimed at undoing or undermining the testimony already given under oath.

7. The power to recall a witness under Section 311 Cr.P.C. is not meant to give the defense an opportunity to fix gaps or lapses in their original cross-examination or for plugging evidentiary gaps or as a tactical move after a long period.

8. Though, the Hon'ble Supreme Court through various judicial pronouncements including **Mohd. Ali Akbar Vs. State of Karnataka 2022 SCC online KAR 1048**, has clarified that Section 33(5) of the Prevention of Children from Sexual Offences Act, 2012 (POCSO) does not impose an absolute bar on recalling a victim witness however the court clarified that the legislator's intention is to ensure that the minor victim is not repeatedly called to court under the pretext of cross-examination, as this would add to their ordeal.

9. This Court keeping in tune with such intent of the provisions of POCSO Act and taking into account the delay in approaching the trial court in filing an application U/s 311 Cr.P.C., deems fit to reject the present quashing application and is not inclined to interfere with the impugned order dated 04.12.2023 for



the reason as stated herein above.

10. Accordingly, the present application is dismissed.

(Sourendra Pandey, J)

Siwani/-

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