

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**CRIMINAL REVISION No.774 of 2024**

Arising Out of PS. Case No.-537 Year-2023 Thana- Kharagpur District- Munger

Rupesh Kumar Singh Son of Naresh Prasad Singh R/O-Village- Prasando,  
PS- Kharagpur, Distt.- Munger

... .. Petitioner/s

Versus

1. The State of Bihar
2. Kalpana Devi Wife of Satyanarayan Jha R/O- Village- Post- Parasando, P.S.-  
Haveli Kharagpur, Distt.- Munger

... .. Respondent/s

**Appearance :**

For the Petitioner/s : Mr.Chandra Shekhar Singh, Advocate  
For the Respondent/s : Mr.Gauri Shankar Gupta, APP

**CORAM: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI**  
**ORAL ORDER**

- 3      23-06-2025                      1. The petitioner is facing custody trial for the offences punishable under Sections 341, 342, 376(3) 452, 506 and 509 of the IPC and Sections 4/6 of the POCSO Act in the Court of the learned Special Judge, POCSO and Additional Sessions Judge VIth at Munger. Trial of the case is going on. On 2<sup>nd</sup> of February, 2024, date was fixed for examination of the victim girl. She was examined in-chief by the prosecution. When the learned Advocate for the petitioner was asked to cross-examine the victim / witness, he submitted before the Trial Court that he did not have any instruction from the accused and therefore he was not in a position to cross-examine the victim. The accused was present in Court. The learned Judge asked him



to take instruction but he denied to get such instruction and left the Court. Subsequently on 11<sup>th</sup> of June, 2024, another Advocate on behalf of the petitioner was engaged. He filed Vakalatnama and an application praying for recalling the said witness no. 1 for cross-examination. The Trial Court rejected the prayer for cross-examination following sub-Section 5 of Section 33 of POCSO Act, where it is clearly stipulated that the Special Court shall ensure that the child is not called repeatedly to testify in the Court.

2. The learned APP for the State has supported the order, dated 11<sup>th</sup> of June, 2024.

3. It is true that a trial under the POCSO Act ought to be concluded with an utmost alacrity and promptness. A minor girl, who is victim of sexual assault, ought not to be brought in Court repeatedly to injure her trauma in the name of procedural delay.

4. At the same time, this Court is not unmindful to note that cross-examination of witness is the most vital part of trial of a criminal case where truthfulness of the incident and veracity of the statement of the victim can be challenged. It is needless to say that in a case under Section 376 or Section 4/6 of the POCSO Act, the evidence of the victim is considering to



the best evidence. The accused may be convicted on the basis of solitary evidence of the victim if it lends credence in the mind of the Court.

5. In the instant case, the learned Advocate on behalf of the accused was present in Court but denied to cross-examine the victim. The accused, in custody, had nothing to do when the defence counsel denied to cross-examine the witness in spite of her being tendered for cross-examination. It is the duty of the Trial Court to engage an Advocate from the State Defence Panel or from the panel of Legal Services Authority to give the accused an opportunity to cross-examine the witness on behalf of him in a case of sexual assault. The evidence of the victim being utmost importance, the Trial Court ought to have ventured other possibilities for her cross-examination.

6. Since the Trial Court has not taken such step and on the contrary closed the evidence of P.W. 1, vide order, dated 11<sup>th</sup> of June, 2024, I am inclined to set aside the said order and direct the Trial Court to issue summons to P.W. 1 for her cross-examination.

7. It is made clear that P.W. 1 shall not be summoned more than one occasion as fixed by the Trial Court and if the defence counsel failed to cross-examine him, he shall not get



any further opportunity to cross-examined the P.W. 1.

8. With the aforesaid observation/direction, this  
Criminal Revision stands disposed of.

**(Bibek Chaudhuri, J)**

uttam/-

|   |  |  |  |
|---|--|--|--|
| U |  |  |  |
|---|--|--|--|

