

HIGH COURT OF CHHATTISGARH, BILASPUR**CRMP No. 74 of 2022**Order reserved on : 14/01/2022Order delivered on : 25/02/2022

- Manish Sonkar, S/o Raju Sonkar, Aged About 21 Years, Camp-1, Gandhi Nagar Pani Tanki Ke Pass, Bhilai, District- Durg (C.G.).

---- Petitioner**Versus**

- State of Chhattisgarh Through- S.H.O. Police Station Chawni, Bhilai District- Durg (C.G.).

---- Respondent

For Petitioner : Shri Aman Pandey, Advocate.

For Respondent/State : Shri Ayaz Naved, G.A.

Hon'ble Smt. Justice Rajani Dubey, Judge**CAV Order****25/02/2022**

1. Being aggrieved by the order dated 26.11.2021 passed by the learned Additional Sessions judge, Fast Track Court, Special Judge (POCSO Act), Durg, District- Durg (C.G.) passed in SCC POCSO/11/2018 whereby the learned appellate court has rejected the application filed by the petitioner under Section 311 of Criminal Procedure Code 1973 for recalling of prosecutrix and her parents.
2. Brief facts of the case are that the petitioner is facing trial under Sections 363, 366 and 376 of IPC and section 5(1)/6 6 of the Protection of Children from Sexual Offences (POCSO) Act, 2012. During trial, statements of mother and father of the prosecutrix

were recorded on 05.01.2019 & 03.08.2019 as PW-2 and PW-4 respectively and the prosecutrix was examined on 27.11.2018 as PW-1. Now, prosecutrix had attained the age of majority and she again approached the petitioner for having a love affair with him and informed him that she had given the statements under undue pressure of family members. On the basis of aforesaid assurance of the prosecutrix, petitioner filed an application under Section 311 of Code of Criminal Procedure, 1973, for re-examination of the prosecutrix and her parents and specific reasons were assigned in the application filed as Annexure P/5 but learned trial Court vide its order dated 26.11.2021 has rejected the application without appreciating the fact that the statement of the prosecutrix was recorded under duress and prosecutrix turned major only in the year 2021 (as per the prosecution). Hence, the present petition filed by the petitioner.

3. Learned counsel for the petitioner submits that impugned order passed by the trial court is illegal, erroneous and contrary to law and same deserves to be set aside. It is further submitted that the parents of the prosecutrix have falsely implicated the petitioner in the aforesaid offence as there was love affair between prosecutrix and the petitioner. In the present case, the factual aspect that whether the initial statements were given under duress or not, it is necessary that they may be re-examined, therefore, the application may be allowed. In support of his argument, reliance has been placed in the matters of **Jagat Ravi v. State of Maharashtra** reported in **AIR 1968 SC**

178, Rama Paswan and Ors. v. State of Jharkhand reported in **(2007) 11 SCC 191 & Iddar and Ors. v. Aabida and Anr.** reported in **(2007) 11 SCC 211.**

4. On the other hand, learned State counsel supported the impugned order.
5. Heard counsel for the parties and perused the material available on record.
6. Hon'ble Supreme Court in the case of **Manju Devi v. State of Rajasthan** reported in **AIR 2019 SC 1976** has held in para 15 as under:-

“15. The scope and object of the provision is to enable the court to determine the truth and to render a just decision after discovering all relevant facts and obtaining proper proof of such facts, to arrive at a just decision of the case. Power must be exercised judiciously and not capriciously or arbitrarily, as any improper or capricious exercise of such power may lead to undesirable results. An application under [Section 311](#) CrPC must not be allowed only to fill up a lacuna in the case of the prosecution, or of the defence, or to the disadvantage of the accused, or to cause serious prejudice to the defence of the accused, or to give an unfair advantage to the opposite party. Further, the additional evidence must not be received as a disguise for retrial, or to change the nature of the case against either of the parties. Such a power must be exercised, provided that the evidence that is likely to be tendered by a witness, is germane to the issue involved. An opportunity of rebuttal however, must be given to the other party. The power conferred under [Section 311](#) CrPC must therefore, be invoked by the court only in order to meet the ends of justice, for strong and valid reasons, and the same must be exercised with great caution and circumspection. The very use of words such as "any

Court", "at any stage", or "or any enquiry, trial or other proceedings", "any person" and "any such person" clearly spells out that the provisions of this section have been expressed in the widest possible terms, and do not limit the discretion of the Court in any way. There is thus no escape if the fresh evidence to be obtained is essential to the just decision of the case. The determinative factor should therefore be, whether the summoning/recalling of the said witness is in fact, essential to the just decision of the case."

7. Hon'ble Supreme Court in the matter of **Natasha Singh V. CBI (State)** reported in **2013 AIR SCW 3554** has held in para 9 as under:-

"Fair trial is the main object of criminal procedure, and it is the duty of the court to ensure that such fairness is not hampered or threatened in any manner. Fair trial entails the interests of the accused, the victim and of the society, and therefore, fair trial includes the grant of fair and proper opportunities to the person concerned, and the same must be ensured as this is a constitutional, as well as a human right."

8. It is observed by above discussion, right to cross-examination is a part of right to fair trial which every person has in the spirit of right to life and personal liberty. In the case in hand, the ground of re-examination is that earlier the statement of the prosecutrix was recorded under duress but the learned trial court ignoring the aforesaid facts and summarily dismissed the application filed by the petitioner. The learned court below ought to have allowed the petition by exercising the jurisdiction under Section 311 Cr.P.C.
9. In the result, I find some merit in this petition and accordingly, the same stands allowed only for re-examination of the prosecutrix.

The learned trial court shall afford a chance to the petitioner to cross-examine the prosecutrix. The petitioner shall bear the expenses of the witness which would be fixed by the learned trial court. The trial court is free to impose conditions as it thinks fit.

10. Needless to say, it is expected that the learned counsel for the petitioner shall not repeat any question which has already been put to the witness in her previous cross-examination. Furthermore, no adjournment will be sought by him on any ground whatsoever. It is further clarified that in case for any reason if witness is not available for the purpose of further cross-examination, his/her testimony shall be read in evidence as it is. With these directions, the petition stands disposed of. Pending applications, if any, also stand disposed of.

Sd/-
(Rajani Dubey)
Judge