

**POCSO Case No.216 of 2015**

**Order No.24, Dtd. 27.04.2023 :-**

Three accused persons on C.B are present and the case record is taken up for passing order over the petition filed on behalf of the prosecution on 28.07.2022 whereby P.W.1 is sought to be recalled on the ground as stated therein and the petition is taken up together with written objection filed by the defence counsel and in the written objection it has been categorically stated that under no circumstances the petition deserves to be allowed by recalling P.W.1 whose evidence has already been expunged by this court by its Order No.12, Dtd.02.08.2019.

Heard Ld counsels for both sides.

Perused the case record very carefully and impugned order of the court dtd. 02.08.2019 and it is evident from the order that despite repeated summons to P.W.1 for his evidence, the P.W.1 having not turned up before the court his evidence was expunged by this court.

From record it appears that P.W.1 is the defacto complainant of this case and pursuant to the complaint lodged by the defacto complainant the instant case was started and if the defacto complainant who has been examined in this case as P.W.1 is debarred to testify before this court that would cause serious prejudice to the entire prosecution particularly the minor victim girl and therefore to my considered opinion the petition filed by the prosecution praying for recalling the order dtd. 02.08.2019 and by calling P.W.1 to testify before the court to complete his evidence deserves to be allowed.

It is important to note that if the petition filed by the prosecution is allowed giving a liberty to the prosecution to recall P.W.1 it would not cause any prejudice to the accused and the accused shall have the liberty to cross-examine the witness after recall.

Under the facts and circumstances petition dtd. 28.07.2022 recalling P.W.1 stands allowed.

Recall P.W.1.

Issue summons accordingly upon P.W.1.

To 24.08.2023 for appearance and evidence of P.W.1.

Dictated & Corrected,

Judge POCSO Court-Cum-  
Addl. Sess. Judge, 2nd Court  
Cooch Behar

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