



IN THE HIGH COURT OF ORISSA AT CUTTACK
CRLMC No.851 of 2026

Dhaneswar Sahoo *Petitioner(s)*
Mr. Ashok Kumar Sahoo,
Advocate

-versus-

State of Odisha *Opposite Party(s)*
Mr. Debasish Nayak, AGA

CORAM:

THE HON'BLE DR. JUSTICE SANJEEB K PANIGRAHI

ORDER

Order No. 20.03.2025

01.

1. This matter is taken up through hybrid arrangement.
2. The present petition under Section 482 of the Code of Criminal Procedure has been instituted by the Petitioner seeking to invoke the inherent jurisdiction of this Court for quashing the order dated 29.01.2026 passed by the learned CJM-cum-Assistant Sessions Judge, Kendrapara in S.T. Case No.109-116 of 2017, whereby the petition filed by the present Petitioner under Section 311 of the Cr.P.C. for recalling P.W.13, the I.O, for the purpose of further cross-examination, has been rejected.
3. The grievance of the Petitioner, in essence, is that the learned trial Court has failed to appreciate the true scope and object of Section 311 of the Cr.P.C., which vests the Court with wide discretionary powers to summon or recall any witness at any stage of the trial if such evidence appears to be essential for arriving at a just decision of the case. It is contended that the testimony of P.W.13 being the I.O constitutes a crucial piece of



evidence in the adjudication of the allegations involved in the case, and therefore denial of an opportunity to further cross-examine the said witness would cause serious prejudice to the defense of the Petitioner and impair the fairness of the trial.

4. The Petitioner, therefore, contends that the impugned order rejecting the prayer under Section 311 of the Cr.P.C. suffers from non-application of judicial mind and is liable to be interfered with in exercise of the inherent jurisdiction of this Court in order to secure the ends of justice and to prevent abuse of the process of the Court.

5. Learned counsel for the Petitioner submits that the Petitioner is facing trial for the alleged offences under Section 498(A)/306/109451/323/294/506/34 of the IPC. It is contended that in the midst of cross-examination the counsel felt serious head reeling and unable to sit in the Court room. Hence, he prayed to defer the cross-examination to some other date. The learned trial court rejected the same in the premises that the medical prescription appended to the petition does not mention the illness of the learned counsel who was physically conducting the cross-examination whereas the said prescription relates to Mr. Dillip Kumar Panda, learned counsel who has the power.

6. It is therefore contended that the rejection of the Petitioner's application filed under Section 348 of the Bharatiya Nagarik Suraksha Sanhita, 2023 seeking recall of P.W.13 has



caused serious prejudice to the defence. According to the Petitioner, the denial of such an opportunity has resulted in grave prejudice to the accused and the impugned order reflects a failure to appreciate that the recall of the witness was necessary for arriving at a just and fair decision of the case. Learned counsel for the Petitioner further contends that the impugned order suffers from the vice of gross non application of judicial mind to the materials on record and warrants interference u/s. 528 B.N.S.S., 2023.

7. Learned counsel for the Petitioner further submits that the law relating to the exercise of powers under Section 348 of the Bharatiya Nagarik Suraksha Sanhita, 2023 is well settled. The provision confers wide discretionary powers upon the trial Court to summon, recall or re-examine any witness at any stage of an inquiry, trial or other proceeding if the evidence of such witness appears to be essential for arriving at a just decision of the case.

8. Per contra, learned counsel appearing for the State vehemently opposes the submissions advanced on behalf of the Petitioner and contends that the contentions raised in the present petition are wholly misconceived. Learned counsel further submits that the present petition has been filed by the Petitioner with the sole intent to protract the proceedings and delay the trial, despite the materials collected during investigation clearly



disclosing the commission of the alleged offences. It is therefore contended that the petition, being devoid of any merit and not disclosing any ground for exercise of the extraordinary jurisdiction of this Court, deserves to be dismissed in limine.

9. The scope and ambit of the power to recall or re-examine a witness has been authoritatively explained by the Supreme Court in *Mohanlal Shamji Soni v. Union of India*¹, wherein it was held that the object of the provision is to enable the Court to arrive at the truth and render a just decision and that the Court may exercise such power at any stage if the evidence of a witness appears essential to the just decision of the case. The Court further held that the provision confers very wide and plenary powers upon the Court, which are to be exercised with great caution and circumspection. Nevertheless, such powers are intended to be invoked whenever the ends of justice so demand or where intervention becomes necessary to prevent abuse of the process of the Court.

10. The inherent jurisdiction is thus designed to ensure that the administration of justice is not thwarted by technicalities and that the judicial process is not permitted to be misused for ulterior purposes. In the context of determination of age in cases involving allegations under the POCSO Act, the Supreme Court in *Jarnail Singh v. State of Haryana*² held that age determination

¹ AIR 1991 SC 1346

² AIR 2013 Supreme Court



must ordinarily be based on reliable documentary evidence such as school records or birth certificates and in their absence medical opinion may be considered. Therefore, where the determination of age has been made without scientific tests or supporting documentary proof, effective cross-examination of the medical officer assumes considerable significance for a just adjudication of the case.

11. After hearing learned counsel for the respective parties and upon perusal of the impugned order, this Court is of the considered view that the ends of justice would be served by granting limited liberty to the Petitioner. Accordingly, the CRLMC is disposed of granting liberty to the Petitioner to file a separate application before the learned trial Court seeking recall of P.W.13, the I.O, specifically indicating therein the questions proposed to be put to the said witness.

12. In the event such an application is filed, the learned CJM-cum-Assistant Sessions Judge, Kendrapara shall consider the same in accordance with law and may allow the application subject to the condition that the cross-examination shall remain strictly confined to the questionnaire set out in the said application and shall not travel beyond the scope thereof.

13. The Petitioner is granted liberty to file such an application within fifteen (15) days from today. Upon such application being filed, the learned CJM-cum-Assistant Sessions



Judge, Kendrapara shall consider the same expeditiously and ensure that the cross-examination of P.W.13 is conducted at the earliest possible opportunity.

14. Issue urgent certified copy of this order as per Rules.

(Dr. Sanjeeb K Panigrahi)
Judge

Gitanjali