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Ajit Paswan and Another Vs State of Jharkhand

Criminal Revision No. 263 of 2005

Court: Jharkhand High Court

Date of Decision: April 28, 2005

Acts Referred:
Criminal Procedure Code, 1973 (CrPC) â€" Section 311#Penal Code, 1860 (IPC) â€" Section 109, 376

Citation: (2005) 53 BLJR 1729

Hon'ble Judges: Amareshswar Sahay, J

Bench: Single Bench

Final Decision: Dismissed

Judgement

Amareshwar Sahay, J.

1. Heard Mrs. Tripathy, learned Counsel appearing for the petitioners and the learned APP.

2. In this application the petitioners have challenged the order dated 9.3.2005 whereby the learned Additional Sessions Judge-cum-FTC No. 1

Dhanbad rejected the prayer of the petitioners to recall the prosecution witnesses namely, Rakhi Kumari (PW 3) and her father Suresh Paswan

(PW 2) for re-cross-examination/ further cross-examination because, the prosecution and the accused compromised the case and they settled their

dispute.

3. The petitioners were facing trial for commission of the offence under Sections 376 and 109 of the IPC. Altogether six prosecution witnesses

were examined and cross-examined including the prosecutrix Rakhi Kumari (PW 3) and her father Suresh Paswan (PW 2) as well as the

Investigating Officer and the Doctor. At this stage a petition was filed on behalf of the petitioners purported to be u/s 311, Cr PC stating therein

that the prosecution party, i.e. the victim and her father and the accused persons have compromised the case and, therefore, due to changed

circumstances PW 3 Rakhi Kumari and PW 2 Suresh Paswan her father may be recalled for further cross-examination.

4. Admittedly, the victim as well as her father were examined by the prosecution and cross-examined by the defence at length and the supported

the case of the prosecution regarding commission of rape. The offence u/s 376, IPC is not compoundable. At this stage making such a prayer for

recall of the material witnesses for further cross-examination on the ground of compromise between the parties would certainly mean that the

intention of the defence is to undermine the prosecution case. The provisions of Section 311, Cr PC cannot be allowed to be used by the defence

as a tool to undermine and demolish the case of the prosecution, which is not permissible under the law. Allowing such a prayer would certainly

defeat the ends of justice and therefore,in my view, the learned Court below has rightly rejected the prayer of the petitioners.

5. Accordingly, having found no merit in this application, the same is dismissed.