

(2025) 11 JH CK 1867

In the Jharkhand High Court

Case No : Criminal Miscellaneous Petition No. 3084 Of 2025

Pankaj Baraik

APPELLANT

Vs

State Of Jharkhand

RESPONDENT

Date of Decision : 04-11-2025

Acts Referred:

Bharatiya Nagarik Suraksha Sanhita, 2023 — Section 528
Code of Criminal Procedure, 1973 — Section 311, 482

Citation : (2025) 11 JH CK 1867

Hon'ble Judges : Anil Kumar Choudhary, J

Bench : Single Bench

Advocate : Kripa Shankar Nanda, Vishwanath Roy, Md. Ayub Ansari

Final Decision : Dismissed

Judgement

Anil Kumar Choudhary, J

1. Heard the parties.

2. This Criminal Miscellaneous Petition has been filed invoking the jurisdiction of this Court under Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023 with prayer to quash the entire criminal proceedings arising out of Simdega (Mahila) P.S. Case No.16 of 2024 corresponding to Special POCSO Case No.21 of 2024 and in alternative to quash the order dated 18.08.2025 passed in Misc. Criminal Application No.503 of 2025 passed in the said Simdega (Mahila) P.S. Case No.16 of 2024 corresponding to Special POCSO Case No.21 of 2024 by the trial court whereby and where under the trial court has rejected the petition filed under Section 311 of Cr.P.C.

3. The brief fact of the case is that the petitioner has committed penetrative sexual assault and rape upon the minor victim girl. After investigation of the case, police found the allegations to be true, submitted charge-sheet and charge has been framed. The victim has been examined as P.W.2. She has supported the case of the prosecution. The examination-in-chief of the victim is up to

paragraph-5 and she has been cross-examined and length from paragraph-6 to 33. The testimony of the prosecutrix has not been demolished in any manner in her cross-examination.

4. Learned counsel for the petitioner and the learned counsel for the victim jointly submit that the victim has now become a major lady and both the petitioner and the victim are ready to solemnize marriage. The petitioner filed an application under Section 311 of Cr.P.C. to recall the P.W.2 on the ground of compromise but the learned Special Judge rejected the same vide order dated 18.08.2025 in the said case. Learned counsel for the petitioner relies upon the settled principle of law that in a non-compoundable case, a witness should not be permitted to be recalled for further cross-examination in order to enable him to resile from his earlier statement and to deny the prosecution case, as such steps would be permitting compounding of an offence in a non-compoundable case by an indirect manner, which is not legally permissible. Hence, it is submitted that the prayer, as prayed for in the instant Cr.M.P., be allowed.

5. Learned Spl.P.P. appearing for the State on the other hand vehemently oppose the prayer of the petitioner made in the instant Cr.M.P. and submits that it is a settled principle of law that heinous offences of penetrative sexual assault and offence of rape upon minor girl, is not to be quashed on the ground of compromise. It is further submitted by the learned Spl.P.P. that the learned trial court has rightly rejected the petition for recall of the prosecutrix only for the purpose of resiling from her earlier statement, hence, it is submitted that this Cr.M.P., being without any merit, be dismissed.

6. Having heard the rival submissions made at the Bar and after carefully going through the materials available in the record, it is pertinent to mention here that it is a settled principle of law, as has been held by the Hon'ble Supreme Court of India in the case of Narinder Singh and Others vs. State of Punjab & Another reported in (2014) 6 SCC 466 paragraph-29.3 of which reads as under:

"29.3. Such a power is not to be exercised in those prosecutions which involve heinous and serious offences of mental depravity or offences like murder, rape, dacoity, etc. Such offences are not private in nature and have a serious impact on society. Similarly, for the offences alleged to have been committed under special statute like the Prevention of Corruption Act or the offences committed by public servants while working in that capacity are not to be quashed merely on the basis of compromise between the victim and the offender." (Emphasis supplied)

that heinous offence like rape is not to be quashed in exercise of power under Section 482 of the Cr.P.C.

7. There is direct and specific allegation against the petitioner of commission of penetrative sexual assault and rape upon the minor victim girl. The victim girl has supported the same in her deposition as P.W.2 during the trial of the case. The learned trial court has rightly rejected the prayer of the petitioner filed under

Section 311 of Cr.P.C. for the purpose of making her resile from her earlier statement made as P.W.2 wherein she has supported the case of the prosecution. It is a settled principle of law that a witness, already examined, should not be recalled in exercise of the power under Section 311 of Cr.P.C. only for the purpose of resiling from her earlier statement made in the court, which such witness has withstood in her cross-examination, because of any subsequent development like compromise. So, on this score also, this Court do not find any illegality having been committed by the learned trial court in rejecting the petition under Section 311 of Cr.P.C. filed with the purpose of making the P.W.2 resile from her earlier statement.

8. In view of the discussions made above, this Court do not find any justifiable reason to accede to the prayer made by the petitioner in the instant Cr.M.P. in exercise of its power under Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023.

9. Accordingly, this Cr.M.P., being without any merit, is dismissed.

10. In view of disposal of the instant Cr.M.P., I.A. No.14472 of 2025 stands disposed of being infructuous.