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**HIGH COURT OF CHHATTISGARH, BILASPUR**

**CRR No. 996 of 2023**

Rakesh Kumar Ratre S/o Itwari Kumar Ratre, Aged About 18 Years R/o Village Birgahni, Police Station Baloda, District Janjgir Champa (Chhattisgarh)

**---- Applicant**

**Versus**

State Of Chhattisgarh Through The Station House Officer, Police Station Baloda, District Janjgir Champa (Chhattisgarh)

**---- Respondent**

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For Applicant	:	Mr. Sumit Singh, Advocate
For State	:	Mr. Vinod Tekam, P.L.

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**Hon'ble Shri Justice Sanjay Kumar Jaiswal**

**Order on Board**

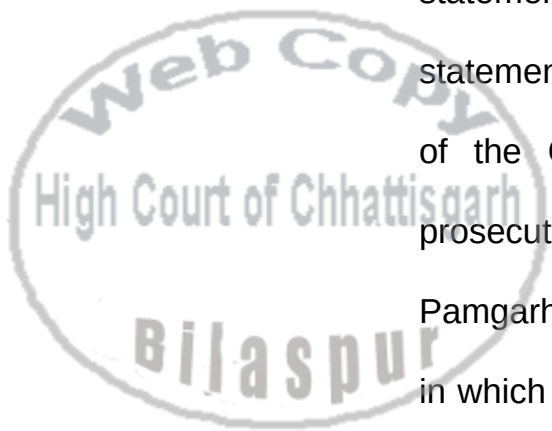
**03/11/2023**

1. In this criminal revision filed under Section 401 of the Code of Criminal Procedure, the applicant/accused has challenged the order dated 01.08.2023 passed by the First Additional Sessions Judge (POCSO), District - Janjgir Champa, Chhattisgarh in Special Sessions Trial No. 36/2022 under Sections 363, 366, 376 IPC and Sections 4 & 6 of the Protection of Children From Sexual Offenses Act, 2012 whereby the application preferred by the applicant/accused for calling the Judicial Magistrate, Pamgarh, as a defense witness, for evidence by whom the statement of the prosecutrix was recorded under Section 164 of the Code of Criminal Procedure has been rejected.
2. The facts of the case, in brief, are that the accused/applicant is alleged to have allured the prosecutrix aged about 15 years old and took her with him on the pretext of marriage and had



physical relationship with her several times. The prosecutrix was recovered from the possession of applicant. Crime No.145/2022 was registered at PS Baloda and charge sheet was filed. After framing of charges, total 10 witnesses were examined by the prosecution. The statement of the accused was recorded under Section 313 of the Code of Criminal Procedure. The case was fixed for defense evidence. At the stage of defence evidence when the accused presented an application, the order in question was passed.

3. Learned counsel for accused/applicant argues that in the court statement during trial, the prosecutrix has made exaggerated statement in support of the prosecution case. Under Section 164 of the Code of Criminal Procedure, the statement of the prosecutrix was recorded by Judicial Magistrate First Class, Pamgarh, District-Janjgir Champa, Chhattisgarh on 11/05/2022 in which the prosecutrix did not make any statement against the accused. During trial, when the prosecutrix was confronted with that statement Ex. P-8, she said that she had not given such statement to the Judicial Magistrate. In such a situation, it has become necessary for the accused/applicant to get the statement of the Judicial Magistrate recorded as a defense witness in the trial Court who recorded the statement under Section 164 of the Code of Criminal Procedure. But his application has been rejected which is not just and proper and he is not getting full opportunity of hearing. Therefore, in the interest of justice, allowing the criminal revision the order in question be set aside and the concerned Judicial Magistrate



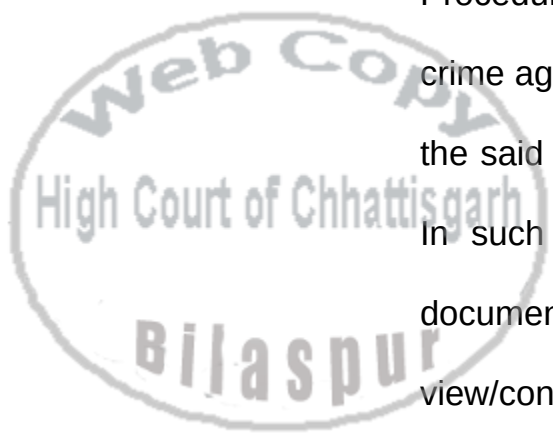


should be allowed to be called as a defense witness. In support of his contention counsel for applicant relied upon the judgment of the Hon'ble Supreme court in the case of **P. Yuvaprakash v. State Rep. by Inspector of Police 2023 SCC Online SC 846**.

4. Learned counsel appearing for the State submits that the order in question is just and proper in the light of available facts and evidence and prays for dismissal of the revision application.
5. Heard both the parties and perused the records.
6. From perusal of the record, it is clear that the statement of the prosecutrix recorded under section 164 of the Code of Criminal Procedure Ex. P-8 does not contain any statement regarding the crime against the accused but during trial, the prosecutrix denied the said statement to have given before the Judicial Magistrate. In such a situation, the document Ex. P-8 is an important document for the defense of accused/applicant. The view/concept expressed by the Honorable Supreme Court in Para – 29 & 30 of the case of **P. Yuvaprakash (supra)** relied upon by the applicant/accused party is as follows:

29. The above surmise by the trial court is untenable. The prosecution did not concededly produce the Judicial Magistrate who recorded the statement; however, that officer was available and was stationed at Erode. She deposed during the trial, as DW-1, and importantly affirmed the veracity of the victim's statement (Ex. P-4) by stating as follows:

"It is a true statement given by the said girl wilfully. The said statement was not given on compulsion. It is correct if it is stated that, (M), in her statement, had told me that, I and my neighbour who was in the nearby house, by name Yuvaprakash are in love for the past 1 1/2 years, we used to talk to each other frequently over phone, my grand-mother on seeing me speaking





over the phone had told my father about it, I took pesticide for ants and attempted to commit suicide....”

30. The prosecution did not even cross examine this witness. Having regard to these overall factors, the court is of the opinion that M’s statement under Section 164 of the Cr. PC contained a truthful narration of the events. This, in other words, meant that there was no penetrative sexual assault on her. Therefore, the provisions of the POCSO Act will not be applicable in this case. The impugned judgment set aside the charge under Section 366 IPC against the appellant. The charges against him, under Section 6 of the POCSO Act as well as Section 10 of the Prohibition of Child Marriage Act, cannot be sustained; the findings of the courts below, i.e., conviction and sentences imposed are, therefore, set aside.

7. Keeping in mind the above view/concept expressed by the Honorable Supreme Court, the accused/applicant should be given full opportunity to defend himself in the case at hand. It becomes necessary to know the authenticity of the statement recorded under section 164 of the Code of Criminal Procedure Ex. P-8, which the prosecutrix has denied in her statement during the trial, in what form and how that statement was recorded. From this point of view, it would be appropriate to record the statement of the concerned Judicial Magistrate before the trial Court.
8. Therefore, this Criminal Revision is allowed. The order in question of the trial Court is set aside. Accepting the prayer of applicant/accused for making the statement of the concerned Judicial Magistrate in the Court, the trial Court is directed to take further legal steps in this regard.
9. Both the parties are directed to remain present before the trial





Court on 24/11/2023 at 11.00 a.m.

- 10.** The record of the trial Court along with the copy of this order be sent back forthwith for necessary proceedings.

**Sd/-  
(Sanjay Kumar Jaiswal)  
Judge**

Khatai

