

**IN THE HIGH COURT OF MADHYA PRADESH  
AT J A B A L P U R  
BEFORE**

**JUSTICE ACHAL KUMAR PALIWAL**

**CRIMINAL REVISION No.2376 OF 2021**

**BETWEEN:-**

**AMIT YADAV, S/O SHRI JAGDISH,  
AGED ABOUT 36 YEARS,  
OCCUPATION:- LABOUR  
R/O WARD NO.12, TEHSIL-JUNNARDEV,  
DISTRICT-CHHINDWARA (M.P.)**

**.....PETITIONER**

***(BY PUSHPENDRA DUBEY - ADVOCATE)***

**AND**

**THE STATE OF MADHYA PRADESH, THROUGH  
POLICE STATION DAMUA, DISTRICT-CHHINDWARA  
(MADHYA PRADESH)**

**.... RESPONDENT**

***(BY SMT. SUNITA SOOD -PANEL LAWYER FOR THE  
RESPONDENT/STATE)***

-----

Reserved on : 26.09.2023

Pronounced on : 29.09.2023

-----

*This criminal revision having been heard and reserved for order,  
coming on for pronouncement this day, Justice Achal Kumar Paliwal  
pronounced the following:*

## **ORDER**

This criminal revision under Section 397/401 of Cr.PC. has been preferred against order dated 13.09.2021 passed by learned Exclusive Special Judge, POCSO Act, 2012, Chhindwara, District Chhindwara in Special Case No.73/2021, whereby learned trial Court has dismissed the application under Section 311 of Cr.P.C. filed by the applicant.

2. Briefly facts relevant for the disposal of present revision are that during recording of evidence of victim/child, petitioner informed the Court that his advocate is not available and petitioner himself refused to cross-examine the witness. Thereupon, learned trial Court closed petitioner's right to cross-examine the witness. Thereafter, petitioner filed an application under Section 311 of Cr.P.C. for providing an opportunity to cross-examine the victim/child but learned trial Court dismissed the said application by passing the impugned order. Being aggrieved by this order, petitioner has filed this petition.

3. I have heard the parties and perused the record of the case.

4. Perusal of record of the case/impugned order reveals that learned trial Court has closed petitioner's right to cross-examine the most important/material witness of the case i.e. victim/child on the ground that in ***W.P. (C) No.76/2018 (Alakh Aalok Shrivastava Vs. Union of India)*** vide order dated 01.05.2018, Hon'ble Apex Court has held that Special Court shall not adjourn the case unnecessarily and shall follow the provisions of POCSO Act. Therefore, if time for cross-examination of victim/child is given, then, it will violate the directions of Hon'ble Apex Court. Therefore, it is not proper to give time/adjournment for cross-examination. It is also stated in the impugned order that trial Court does not

possess any inherent powers and if application filed by petitioner under Section 311 of Cr.P.C. is allowed, then, it will amount to review-ing the order, which is not permissible.

5. It is evident from impugned order and deposition of victim/child that on 25.08.2021, petitioner's Advocate was not available and on that ground petitioner has sought adjournment for cross-examining the witness. Record does not show that on earlier occasions also victim/child was present for recording of evidence but petitioner sought adjournment on similar grounds that his Advocate is not available.

6. In view of above, in this Court's opinion, learned trial Court has committed material illegality/perversity in closing petitioner's right to cross-examine the most material witness i.e. victim/child. Hence, in view of above, petition is **allowed** and impugned order dated 13.09.2021, being illegal/perverse/incorrect, passed by learned trial Court in special case 73/21, is **set aside** and it is directed that learned trial Court will afford an opportunity to petitioner to cross-examine the victim/child (PW-1). It is made clear that whenever victim/child (PW-1) is present in Court for cross-examination, then, petitioner shall cross-examine the witness and shall not seek any adjournment and trial Court will not give any further adjournment for the purpose of cross-examination, except, in case, cross-examination remains incomplete on account of paucity of time.

7. With the aforesaid observations, present revision is **disposed of**.

(ACHAL KUMAR PALIWAL)  
JUDGE