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**ABC 2025(I) 1 SC**  
**ACQUITTAL & BAIL CASES**  
**SUPREME COURT OF INDIA**  
(Abhay S. Oka & Augustine George Masih, JJ.)  
Criminal Appeal No. .... of 2024  
(Arising Out of Special Leave Petition (Crl.) No.6182/2024)  
(From Allahabad High Court)  
Decided on : 28 November, 2024

NADEEM

- Appellant(s).

Versus

STATE OF U.P. &amp; ORS.

- Respondent(s).

**Law Covered** :- (A) *Criminal Procedure Code – Section 311 (Bharatiya Nagarik Suraksha Sanhita, 2023 – Section 348) – Recall of Witnesses – Cross-examination of Key Witness – Prejudice to the Accused – Evidence Recorded in Absence of Advocate – Application for Recall Unreasonably Denied – Held, recording evidence in absence of the accused & his advocate causes clear prejudice – Trial Court directed to recall the witness for cross-examination – Duty of Public Prosecutor to Ensure Fair Trial Emphasized– Children from Sexual Offences (POCSO) Act, 2012–Sections 3 & 4. (Para 6, 8)*

(B) *Criminal Procedure Code – Section 482 (Bharatiya Nagarik Suraksha Sanhita, 2023 – Section 528) – Inherent Powers – High Court’s Obligation to Address Illegality – Recording Evidence Without Representation – High Court Failed to Recognize Prejudice – Hyper-Technical Approach Criticized – Held, High Court erred by not addressing the absence of the accused’s advocate during evidence recording – Orders of Trial Court & High Court set aside. (Para 7, 8)*

**Facts** :- *The appellant faced trial for alleged offences under the Indian Penal Code and the Protection of Children from Sexual Offences Act. During the pandemic, the examination-in-chief of PW1, the complainant, was conducted through video conference. However, neither the appellant nor his advocate was present during this critical stage of the trial. Despite this, the Trial Court proceeded to close the cross-examination of PW1 on the same day. Following this, other witnesses, including PW2 and PW4 (the victim), were examined. Subsequently, the appellant filed an application under Section 311 of the Code of Criminal Procedure, seeking to recall PW1 for cross-examination. The Trial Court rejected this application, citing procedural grounds. Dissatisfied with this decision, the appellant moved the High Court under Section 482 of the Cr.P.C. to quash the Trial Court’s order. However, the High Court also dismissed his petition, leading the appellant to approach the Honourable Supreme Court. The Honourable*

Court identified significant procedural lapses in the trial. It held that recording the evidence of PW1 in the absence of the appellant's advocate violated the principles of a fair trial. The Court criticized both the Trial Court and the High Court for adopting an unduly technical approach and noted that the public prosecutor failed in their duty to ensure fairness. Setting aside the impugned orders, the Honourable Supreme Court directed the Trial Court to recall PW1 for cross-examination and issue necessary summons. It emphasized the importance of procedural fairness and allowed the appeal, highlighting the need to rectify delays caused by systemic oversights.

**Law of Relief :-** Recording of evidence in the absence of the accused's advocate constitutes a violation of fair trial principles – Courts must ensure representation to prevent prejudice, and denial of recall to remedy such lapses is unjustified.

**Counsel :-** For Appellant(s): Mr. Abdul Qadir Abbasi, Mr. Maaz Rehman Khan, Mr. Aaraf Khan, Advs.  
For Respondent(s): Ms. Ruchira Goel, Adv.

### **ORDER**

**ABHAY S. OKA & AUGUSTINE GEORGE MASIH, JJ.:-**1. Leave granted.

2. Service has been effected on respondent nos. 2 and 3. We have heard learned counsel appearing for the appellant and learned counsel appearing for the first respondent – State.

3. The appellant is facing a trial for the offences punishable under Sections 363, 366 and 376 of the Indian Penal Code, 1860 (for short, 'the IPC') and Sections 3 and 4 of the Protection of Children from Sexual Offences Act, 2012 (for short, 'the POCSO Act')

4. The second respondent – complainant is PW1 whose examination-in-chief was recorded by the Trial Court on 15th February, 2021. It appears that due to pandemic, evidence was recorded through video conference. The order sheet dated 27th July, 2021 records that the appellant appeared through video conference but his Advocate was not present. The Trial Court closed the cross-examination of PW1 on the very day. Thereafter, PW2 and PW4 (victim) were examined by the Court. On 16th May, 2023, the appellant moved an application under Section 311 of the Code of Criminal Procedure, 1973 (for short, 'the Cr.P.C.) for recalling PW1 to enable him to cross-examine the witness. The learned Trial Judge by order dated 30th May, 2023 rejected the application. From the order dated 31st October, 2023, we find that the application was opposed by

the learned Public Prosecutor.

a 5. Being aggrieved by the said order, the appellant filed a petition under Section 482 of the Cr.P.C. for quashing the order of the Trial Court. By the impugned order dated 31st October, 2023, the application has been rejected.

b 6. This is a case which indicates how the system operates and trials are delayed. Examination-in-chief of PW1 (second respondent) was recorded through medium of video conference on 15th February, 2021. The evidence was recorded in absence of the appellant's Advocate. The learned Trial Judge has noted in the order dated 30th May, 2023 that the appellant was not brought before the Court on c 15th February, 2021 and no advocate appeared for him on that day. The learned Trial Judge could not have recorded the evidence of PW1 in absence of the appellant and his advocate. After noting this illegality in the order dated 13th May, 2023, the Trial Court rejected d the application. The learned Trial Judge also noted that during the pandemic period, the presence of prisoners was being procured by the Courts through video conference. This was a case where there was a clear prejudice to the appellant as the evidence of PW-1 was recorded in absence of his advocate. Therefore, the Trial Court ought e to have allowed the application. Even the public prosecutor ought to have taken a fair stand and should not have objected to the said application. It is the duty of the public prosecutor to ensure that the trial is conducted in a fair manner.

f 7. The matter did not rest here. Then, the petition under Section 482 Cr.P.C. filed for challenging the order of the Trial Court was heard by the High Court. As noted in paragraph 4 of the impugned order, the Additional Government Advocate vehemently opposed the petition under Section 482 of the Cr.P.C. Even the High g Court has missed the very important point that the evidence of PW1 was recorded in absence of the appellant's advocate. Even the appellant was not physically produced before the Court on that day. The result of all this is that now in December, 2024, PW1 will have to be recalled for cross-examination. This order we are passing one year h and six months after the appellant applied for recall. Both the Courts have adopted hype-technical approach.

8. Accordingly, both the impugned orders are set aside. We direct the learned Trial Court to recall PW1 for cross- examination by the Advocate for the appellant. Necessary summons be issued by the learned Trial Court to the second respondent to appear for

undergoing cross-examination on the date fixed by the Trial Court.

9. The appeal is accordingly allowed on above terms.

10. Pending application(s), if any, shall stand disposed of.

**Result :-** The appeal is allowed.

ABC 2025(I) 4 SC

ACQUITTAL & BAIL CASES

SUPREME COURT OF INDIA

(Pankaj Mithal & Sandeep Mehta, JJ.)

Criminal Appeal No (s). \_\_\_ of 2024

(Arising Out of Special Leave Petition (Crl.) No. 15909 of 2023)

(From High Court of Jabalpur)

Decided On : 4 December, 2024

AKANKSHA ARORA

- Appellant(s)

Versus

TANAY MABEN

- Respondent(s)

**Law Covered :-** (A) Criminal Procedure Code - Section 397 & 482 (Bharatiya Nagarik Suraksha Sanhita, 2023 - Section 438 & 528) - Nomenclature of a petition is immaterial - The High Court may convert a Section 482 CrPC petition into a revision under Section 397 CrPC and vice versa - Dismissing petitions on hyper-technical grounds undermines substantive justice. (Para 7)

(B) Criminal Jurisprudence - Inherent Power of High Court - The label of a petition is immaterial - The High Court may exercise its inherent powers to address the controversy appropriately - Madhu Limaye v. The State of Maharashtra - relied. (Para 8)

(C) Criminal Procedure Code - Section 397 & 482 (Bharatiya Nagarik Suraksha Sanhita, 2023 - Section 438 & 528) - Scope - The inherent powers under Section 482 remain unaffected by specific provisions like Section 397 - While inherent powers should not encroach upon areas reserved for specific powers, they may be exercised in cases of abuse of process or extraordinary circumstances - The availability of an alternative remedy under Section 397 does not justify dismissal of an application under Section 482 CrPC - Prabhu Chawla v. State of Rajasthan and Another. (Para 9)

(D) Criminal Procedure Code - Section 397 & 482 (Bharatiya Nagarik Suraksha Sanhita, 2023 - Section 438 & 528) - Petition filed for enhancement of interim maintenance under Section 482 - dismissed by High Court - Even if the High Court was of the view that the appellant should have invoked jurisdiction under Section 397 CrPC for enhancement of interim maintenance, it ought not to have