

SL. No	Date	Office Notes, reports, orders or proceedings or directions and Registrar's order with Signatures	COURT'S OR JUDGES'S ORDERS
			C482 No.2005 of 2023 <u>Hon'ble Sharad Kumar Sharma, J.</u> Mr. Vaibhav Pandit, learned counsel for the applicant. Mr. S.C. Dumka, learned Assistant Government Advocate for the State. The present applicant is facing the proceedings in Criminal Case No.827 of 2017, "State Vs. Naresh Kumar", being the proceedings, in which the applicant is being tried for the offences under Sections 420,406, 504, 506 of the IPC, which stood instituted, as a consequence of the culmination of the investigation in the FIR, which was registered on 22.08.2010. As a result thereto, the proceedings of Criminal Case No.827 of 2017, stood instituted on as back as in 2013. The trial proceeded and the prosecution's witnesses were closed and during that stage, the Investigating Officer, as well as, Devendra Singh, whom the applicant wants to be summoned to be cross-examined were already cross-examined by the earlier counsel appearing on behalf of the applicant. The applicant has filed an application under Section 311 of the Cr.P.C. at a much later stage contending therein, that, at the

		stage, when the cross-examination was being conducted for the Investigating Officer and Devendra Singh, certain vital questions were left to be placed. As such, there was a necessity to consider the application preferred under Section 311 of the Cr.P.C. In the application, thus filed by the applicant, if that itself, is taken into consideration, in fact, it is absolutely vague and contrary to the argument extended by the learned counsel for the applicant, because the application itself does not justify and support the argument extended by the learned counsel for the applicant, because it is not a fact that the applicant was ever deprived of his opportunity of cross-examination of the Investigating Officer and Devendra Singh, but, rather he has attempted to add a flavour by filing an application under Section 311 of the Cr.P.C. by introducing one Mr. Bhoop Singh also to be summoned for further examination. Though, despite of the fact, that he had never appeared as a witnesses before the learned trial Court. Thus, the argument extended by the learned counsel for the applicant that the invocation of Section 311 of the Cr.P.C., as prayed for by him in his application as preferred by him, is absolutely not sustainable.
--	--	--

		Because, as per the observations made, the prosecution evidence has already been closed and the finding, which has been recorded, it is not that the applicant was deprived to cross-examine the Investigating Officer and Devendra Singh, rather he has availed the opportunity and if the earlier counsel has failed to place the relevant questions, after the completion of the cross-examination of Investigating Officer and Devendra Singh, that in itself cannot be a new ground for a newly inducted counsel to file an application under Section 311 of the Cr.P.C. Because that would be absolutely a misuse of the provisions contained under Section 311 of the Cr.P.C. adding to delay a proceedings, which was instituted as back as in 2013 and that too, more importantly, when the 'charge' has already been framed on 03.02.2014.
--	--	---

		It is almost after 10 years, the application under Section 311 has been filed. The trial Court while rejecting the application under Section 311 of the Cr.P.C. has observed that the applicant was not deprived of cross-examination of the Investigating Officer and Devendra Singh, but rather the finding has been recorded that ample of opportunity was given and it was availed by the applicant to cross-examine the Investigating Officer and Devendra Singh.
--	--	---

		Hence, there was no justification for filing the application under Section 311 of the Cr.P.C. to bring it within the ambit of Section 311 of the Cr.P.C., because the powers, which could be exercised under Section 311 of the Cr.P.C. by the Courts to summon the witnesses for their examination would be only when the evidences of such persons, who are required to be re-examined, is found to be material and essential for the Court for just decision of a case.
--	--	---

		Since in the instant case, there is no complete deprivation, as such, the provisions contained under Section 311 of the Cr.P.C. cannot be utilized, as a tool to delay the proceedings when there is no deprivation, as such, caused to the applicant to deprive him of his complete opportunity to cross-examine the Investigating Officer and Devendra Singh.
--	--	--

		The said principle has been laid down by the Hon'ble Apex Court in paragraph no.12 of its judgment as reported in 2021 SCC (14) 1, State v. N. Seenivasagan. Paragraph no.12 is extracted hereunder:-
--	--	---

		<i>12. In our view, having due regard to the nature and ambit of Section 311 of the CrPC, it was appropriate and proper that the applications filed by the prosecution ought to have been allowed. Section 311 provides that any court may, at any stage of any inquiry, trial or other proceedings under CrPC, summon any person as a witness, or examine any person in attendance, though not summoned as a witness, or recall and re-examine any person already examined and the Court shall summon and examine or recall and re-examine any such person</i>
--	--	--

“if his evidence appears to it to be essential to the just decision of the case”. The true test, therefore, is whether it appears to the Court that the evidence of such person who is sought to be recalled is essential to the just decision of the case.

In paragraph no.12 of the said judgment, it has been observed by the Hon’ble Apex Court that Section 311 of the Cr.P.C. is not to be used as a weapon to delay the proceedings, when the witnesses has already been examined and ample opportunity has already been availed by the applicant.

Re-examination would be only in the circumstances, when the evidence appears to be essential for just decision. There is no material as such on record to show that when the prosecution’s evidence was closed, any new development has taken place, which could have necessitated to summon the witnesses for cross-examination.

In view of the aforesaid, I do not find any merit in the C482 Application and the same is, accordingly, dismissed.

(Sharad Kumar Sharma, J.)
10.10.2023

Sukhbant