



**Serial No.01**  
**Regular List**

**HIGH COURT OF MEGHALAYA**  
**AT SHILLONG**

Crl. P. No. 17 of 2024

Reserved on : 23.08.2024

Date of Decision: 02.09.2024

State of Meghalaya  
Represented by the Secretary to  
The Government of Meghalaya,  
Home (Police) Department,  
Shillong.

**Vs.** Shri. Mathi Lyngkhoi  
(Accused).  
Son of (L) R. Shangoid,  
Resident of Mawrang Village,  
West Khasi Hills District,  
Meghalaya.

**::::PETITIONER.**

**::::RESPONDENT.**

**Coram:**

**Hon'ble Mr. Justice B. Bhattacharjee, Judge**

**Appearance:**

For the Petitioner(s) : Mr. N. D. Chullai, AAG with  
Mr. E. R. Chyne, GA.

For the Respondent(s) : Mr. R. Kharkrang, Adv.

**(JUDGMENT & ORDER)**

By this application under Section 482 Cr.P.C, the petitioner-State has challenged the impugned order dated 25-07-2023 passed in Sessions



Case No. 30 of 2020 (G.R Case No. 187 of 2011) by the learned Sessions Judge, South West Khasi Hills District, Mawkyrwat whereby the application under Section 311 Cr.P.C filed by the prosecution for summoning and examination of additional witnesses was rejected.

1. The brief fact of the case is that an FIR dated 23-10-2011 was lodged by Smti Prialdoris Mawlein before the Officer-in-Charge Nongstoin Police Station alleging that on 23-10-2011, at about 1.30 AM, the respondent herein had brutally murdered one Shri. Komli Mawlein Shianglang at a coal quarry by using a firewood while the victim was asleep, and after committing the crime, the respondent fled away from the spot. On the basis of the said FIR, the Nongstoin PS Case No. 145 (10) 2011 under Section 302 IPC was registered by the police. The case was later transferred to Ranikor PS and registered as Ranikor PS Case No. 47 (10) 2011 under Section 302 IPC as the place of occurrence was under jurisdiction of the Ranikor Police Station. After conclusion of the investigation, a charge-sheet was filed in the matter against the respondent and by order dated 21-01-2016, the learned Trial Court framed charge under Section 302 IPC against him. During the course of the trial, the prosecution examined five witnesses and they were discharged after examination-in-chief and cross-examination. After completion of recording of statement of the respondent (accused) under Section 313 Cr.P.C, the prosecution filed an application under Section 311 Cr.P.C on 17-04-2023 before the Trial Court for calling 5(five) additional witnesses as their evidence would be vital for the just decision of the case. A show-cause reply dated 16-05-2023 was filed on behalf of the respondent against the



said application. The learned Trial Court, after hearing the parties, vide impugned order dated 25-07-2023 rejected the application of the prosecution on the ground of delay. Being aggrieved, the State has preferred this criminal petition before this Court.

2. Mr. N. D. Chullai, learned AAG appearing for the petitioner, submits that the rejection of the application for calling of additional witnesses by the Trial Court on the ground of delay is against the settled propositions of law. He submits that the learned Trial Court has failed to realize the gravity of the offence involved in the matter and also the relevance and importance of the witnesses sought to be called as additional witnesses by the prosecution. He submits that the additional witnesses named in the application under Section 311 Cr.P.C. include eyewitnesses, seizure witnesses and the Magistrate who recorded the confessional statement of the accused and, hence, are very vital witnesses for unearthing the truth in the matter. He submits that the learned Trial Court without realizing the importance of the testimony of such witnesses, has passed the impugned order mechanically only on the ground of delay. The learned AAG contends that the prolonged pendency or the age of a case cannot be sole decisive of the matter when the offence involved is grave in nature and a prayer is made for examination of material witnesses. He submits that though delay is not desirable in a criminal trial, the duration of a case cannot displace the basic requirement of ensuring the just decision after taking all the necessary and material evidence on record. He submits that the learned Trial Court while passing the impugned order did not appreciate the importance of examination of



the additional witnesses named in the application and rejected the same without applying its judicious mind. In support of his argument, the learned AAG has places reliance on the decision of the Apex Court reported in (2019) 6 SCC 203, *Manju Devi Versus State of Rajasthan and Another* and prays for quashing of the impugned order and also for allowing the prosecution to examine the additional witnesses named in the application filed before the Trial Court under Section 311 Cr.P.C.

3. Mr. R. Kharkrang, learned Counsel appearing for the respondent, on the other hand, supported the impugned order and submitted that there is no illegality and infirmity in the order passed by the Trial Court. He submits that the application for calling additional witnesses by the prosecution was filed after the closure of the prosecution witnesses and recording of statement of the accused under Section 313 Cr.P.C. and, hence, the Trial Court was right in rejecting the same on the ground of delay. He submits that the trial of the case has been pending for more than 8 (eight) years and the prosecution has not given any valid reason for filing the application under Section 311 Cr.P.C. at a belated stage when the matter was pending for final hearing. According to him, the right to speedy trial is an inalienable right of the accused under Article 21 of the Constitution of India and the said right cannot be taken away without any valid or justified reason. He submits that the Trial Court while rejecting the application of the prosecution under Section 311 Cr.P.C. has recorded valid reason in the light of the established norms of criminal jurisprudence. The learned Counsel submits that where the



prosecution evidence is closed and the reasons for non-examination of the witnesses earlier are not satisfactory, the summoning of the additional witnesses at belated stage is highly prejudicial to the accused and the decision of the Trial Court, as such, does not require any interference by this Court. In support of his argument, the learned Counsel has placed reliance on the decisions of the Apex Court reported in (2019) 14 SCC 328, *Swapan Kumar Chatterjee Versus Central Bureau of Investigation* and (2009) 3 SCC 355, *Vakil Prasad Singh Versus State of Bihar*.

4. Before coming to the controversy involved in the present case, it would be appropriate for this Court to take note of the proposition of law laid down in the decisions relied on by the learned Counsels for the rival parties. The Apex Court in *Swapan Kumar Chatterjee (supra)* at para 12 held: -

*“12.Where the prosecution evidence has been closed long back and the reasons for non-examination of the witness earlier are not satisfactory, the summoning of the witness at belated stage would cause great prejudice to the accused and should not be allowed. Similarly, the court should not encourage the filing of successive applications for recall of a witness under this provision.”*

The aforesaid observation was made on the background of the fact that repeated adjournments were granted to present expert witness before the Court from 2004 to 2017, and yet the witness was not produced before the Court. The fact involved therein was that the public prosecutor had filed a petition praying for examination of handwriting expert, which was allowed and a date was fixed on 24-03-



2004 and then to 26-03-2004 for his examination. However, the witness failed to appear before the Court due to which the prosecutor further sought time for fixing of a schedule till next day for his examination. The request of the prosecutor was accepted by the Magistrate with a direction that the schedule is fixed on and from 10-05-2004 to 12-05-2004. The said witness yet again failed to turn up. The prosecutor did not pray for reissuing of summon and bailable warrant, but a separate petition was filed by the prosecutor for resummoning the witness. Such prayer was considered by the Magistrate as a last chance. From then onwards, whenever a date was fixed for examining the handwriting expert, the witness failed to turn up. This practice had continued for a period of 13 years starting from the year 2004. In those circumstances, the Apex Court held that the Court erred in repeatedly granting last opportunity to produce the witness and in the light of the repeated failure to produce the witness in Court, application for summoning the said witness was rejected by the Supreme Court.

Thus, the factual background of *Swapan Kumar Chatterjee (supra)* was totally different from the present case. In the said case, it is nowhere observed by the Apex Court that the question of delay should be the sole criteria for deciding an application under Section 311 Cr.P.C.

**5.**—In the case of *Vakil Prasad Singh (supra)*, the Apex Court while recognizing the right to speedy trial and public trial a constitutional guarantee, at para 24 observed as follows: -



*“24. It is, therefore, well settled that the right to speedy trial in all criminal persecutions (sic prosecutions) is an inalienable right under Article 21 of the Constitution. This right is applicable not only to the actual proceedings in Court but also includes within its sweep the proceeding police investigations as well. The right to speedy trial extends equally to all criminal prosecutions and is not confined to any particular category of cases. In every case, where the right to speedy trial is alleged to have been infringed, the court has to perform the balancing act upon taking into consideration all the attendant circumstances, enumerated above, and determine in each case whether the right to speedy trial has been denied in a given case.”*

In the above case, the Apex Court had also reiterated the propositions of law laid down in (1992) 1 SCC 285 (A.R. Antulay case), some of which were reflected at para 20 of the judgment of the case. The propositions at sub paras (iv),(v) & (vi) laid down that while determining whether undue delay has occurred (resulting in violation of right to speedy trial) one must have regard to all the attendant circumstances, including nature of offence, number of accused and witnesses, the workload of the court concerned, prevailing local conditions and so on – what is called, the systematic delays. It was further observed that each and every delay does not necessarily prejudice the accused. Some delays may indeed work to his advantage. However, inordinate long delay may be taken as presumptive proof of prejudice. In this context, the fact of incarceration of the accused will also be a relevant fact. The prosecution should not be allowed to become persecution. But when does the prosecution become persecution, again depends upon the



facts of a given case. It was held that ultimately, the court has to balance and weigh several relevant factors – ‘balancing test’ or ‘balancing process’ – and determine in each case whether the right to speedy trial has been denied.

It emerges from the above that whenever a plea of infringement of right to speedy trial is alleged or an objection is raised on the ground of delay, the court has to perform the balancing act by taking into consideration all the attendant circumstances including the nature of offence.

6. In *Manju Devi (supra)*, the Apex Court while elaborating powers under Section 311 Cr.PC., at paras 10 and 13 observed: -

*“10. It needs hardly any emphasis that the discretionary powers like those under Section 311 CrPC are essentially intended to ensure that every necessary and appropriate measure is taken by the Court to keep the record straight and to clear any ambiguity insofar as the evidence is concerned as also to ensure that no prejudice is caused to anyone. The principles underlying Section 311 CrPC and amplitude of the powers of the court thereunder have been explained by this Court in several decisions. In *Natasha Singh v. CBI*<sup>3</sup>, though the application for examination of witnesses was filed by the accused but, on the principles relating to the exercise of powers under Section 311, this Court observed, inter alia, as under: (SCC pp. 746 & 748-49, paras 8 &15)*

*"8. Section 311 CrPC empowers the court to summon a material witness, or to examine a person present at "any stage" of "any enquiry", or "trial", or "any other proceedings" under CrPC, or to summon any person as a witness, or to recall and re-examine any person who has already been examined if his evidence appears to it, to be essential to the arrival of a just decision of the case.*



*Undoubtedly, CrPC has conferred a very wide discretionary power upon the court in this respect, but such a discretion is to be exercised judiciously and not arbitrarily. The power of the court in this context is very wide, and in exercise of the same, it may summon any person as a witness at any stage of the trial, or other proceedings. The court is competent to exercise such power even suo motu if no such application has been filed by either of the parties. However, the court must satisfy itself, that it was in fact essential to examine such a witness, or to recall him for further examination in order to arrive at a just decision of the case.*

\* \* \*

*15.The scope and object of the provision is to enable the court to determine the truth and to render a just decision after discovering all relevant facts and obtaining proper proof of such facts, to arrive at a just decision of the case. Power must be exercised judiciously and not capriciously or arbitrarily, as any improper or capricious exercise of such power may lead to undesirable results. An application under Section 311 CrPC must not be allowed only to fill up a lacuna in the case of the prosecution, or of the defence, or to the disadvantage of the accused, or to cause serious prejudice to the defence of the accused, or to give an unfair advantage to the opposite party. Further, the additional evidence must not be received as a disguise for retrial, or to change the nature of the case against either of the parties. Such a power must be exercised, provided that the evidence that is likely to be tendered by a witness, is germane to the issue involved. An opportunity of rebuttal however, must be given to the other party. The power conferred under Section 311 CrPC must therefore, be invoked by the court only in order to meet the ends of justice, for strong and valid reasons, and the same must be exercised with great caution and circumspection. The very use of words such as "any court", "at any stage", or "or any enquiry, trial*



*or other proceedings", "any person" and "any such person" clearly spells out that the provisions of this section have been expressed in the widest possible terms, and do not limit the discretion of the court in any way. There is thus no escape if the fresh evidence to be obtained is essential to the just decision of the case. The determinative factor should therefore be, whether the summoning/recalling of the said witness is in fact, essential to the just decision of the case.*

*13. Though it is expected that the trial of a sessions case should proceed with reasonable expedition and pendency of such a matter for about 8-9 years is not desirable but then, the length/duration of a case cannot displace the basic requirement of ensuring the just decision after taking all the necessary and material evidence on record. In other words, the age of a case, by itself, cannot be decisive of the matter when a prayer is made for examination of a material witness."*

Thus, from the above, it is apparent that this scope and object of the provisions of Section 311 Cr.PC is for the purpose of enabling the Court to determine the truth and to render a just decision after discovering all relevant facts and obtaining proper proof of such facts to arrive at a just decision of the case. A duty is cast on the court to ensure that the material evidence comes on record so as to arrive at just and proper conclusion. The age of the case, by itself cannot be decisive of the matter when a prayer is made for examination of material witness.

7. In the present case, the charge against the respondent was framed on 21-01-2016 and the case has been pending for more than 8 years. The prosecution closed its evidence on 07-12-2022 and the statement of the respondent under Section 313 Cr.P.C. was recorded



on 06-03-2023. The application under Section 311 Cr.P.C for calling additional witnesses was filed by the prosecution on 17-04-2023. The reason for non-examination of the witnesses earlier was stated to be due to *bona fide* mistake and oversight, which is definitely a mistake on the part of the prosecution. There was a gap of about 4(four) months between the date of closure of prosecution evidence and date of filing of the application under Section 311 Cr.P.C. It is not the case here that the prosecution had delayed the matter intentionally and did not file the application under Section 311 Cr.P.C. immediately after realizing its mistake. In such a situation, delay in preferring the application for summoning additional witnesses cannot be termed as inordinate long delay giving rise to presumptive proof of prejudice to the respondent. There is no dispute that the statements of all the witnesses named in the application under Section 311 Cr.P.C. were recorded by the police at the stage of the investigation under Section 161 Cr.P.C. The indisputable facts and situation of the case remains that the respondent is a named accused in the FIR and he has been charged and tried for an offence under Section 302 IPC on the accusation of brutally murdering one Shri. Komli Mawlein Shinglang, which, undoubtedly is a grave offence.

**8.** A perusal of the impugned order does not show that the Trial Court had taken into consideration the importance of the evidence of the witnesses named by the prosecution in its application filed under Section 311 Cr.P.C. There is also nothing to indicate that the Trial Court had shown any interest to determine whether the additional witnesses named by the prosecution are material witnesses or not, and



what influence their testimony might have in the outcome of the trial. A perusal of the statements of all the 5(five) named additional witnesses under Section 161 Cr.P.C., annexed with the present petition, reveal that they have played vital role in the investigation of the matter and their evidence are essential for determination of truth and for just decision of the case. No attempt was made by the Trial Court to balance the situation by taking into consideration the gravity of the offence involved and the probative value of the evidence of the additional witnesses which are likely to be adduced by them. Hence, it can be concluded that the Trial Court, while passing the impugned order, did not appreciate the matter in the light of the law laid down by the Apex Court. The impugned order, as such, cannot be sustained in law.

**9.** For the reasons and discussions above, this criminal petition succeeds. The impugned order dated 25-07-2023 passed in Sessions Case No. 30 of 2020 (G.R Case No. 187 of 2011) by the learned Sessions Judge, South West Khasi Hills District, Mawkyrwat is set aside and quashed. Resultantly, the application filed by the prosecution before the Trial Court for summoning the additional witnesses stands allowed. The Trial Court is directed to issue summons to the witnesses named in the application numbered as Petition No.108 of 2023 filed by the prosecution by fixing a date or different dates for recording their evidence.

**10.** This criminal petition stands allowed.



**JUDGE**

Meghalaya  
02.09.2024  
"Biswarup-PS"

