

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.28784 of 2013

=====

Shiv Kumar Singh S/O Gopal Singh, Resident of Village- Basudeopur, P.S.-
Muffasil, District- Begusarai

.... Petitioner

Versus

The State of Bihar

.... Opposite Party

=====

Appearance :

For the Petitioner : Mr. Jai Prakash Singh, Advocate
For the Opposite Party : Mr. Uma Nath Mishra, APP

=====

CORAM: HONOURABLE MR. JUSTICE BIRENDRA PRASAD VERMA
CAV ORDER

6 24-12-2013

The petitioner has approached this Court under Section 482 of the Code of Criminal Procedure, 1973 (in short Cr.P.C.) invoking its inherent powers for quashing the order dated 10.6.2013 passed in Sessions Trial No.204 of 2011, arising out of Muffasil P.S.Case No.299 of 2010, by the learned Additional Sessions Judge I, Begusarai, whereby in exercise of his powers under Section 311 Cr.P.C. he has summoned two witnesses, namely, Ramashray Singh and his wife Sita Devi for their examination as court witnesses.

2. The petitioner is the husband of the deceased Dezy Devi and is facing criminal prosecution for offences under Sections 304B/201/34 of the Indian Penal Code, as he is alleged to have killed his wife for non-fulfilment of demand of dowry within seven years of their marriage.

3. Learned counsel appearing on behalf of the petitioner has submitted that prayer for bail made on behalf of the petitioner was earlier rejected by this Court as he is said to be the main culprit, but by order dated 8.8.2012 passed in Cr. Misc. No.16122 of 2012 vide Annexure-4 while considering the prayer



for bail of the petitioner this Court had directed the learned trial court to take up the trial of the petitioner preferably on day-to-day basis so that there is no further delay in trial. It is contended that in the light of the aforesaid order, evidence on behalf of the prosecution was closed. Defence evidence was also closed and case was fixed for judgment on 10.6.2013. However, the learned trial court on 10.6.2013 in arbitrary exercise of his powers under Section 311 Cr.P.C. directed for summoning two witnesses, referred to above, for their examination as court witnesses. According to the learned counsel, the impugned order dated 10.6.2013 is contrary to scheme and mandate of Section 311 Cr.P.C. and this order has been passed by the learned trial court only with a view to fill up the lacunae in the prosecution case. Therefore, according to him, the impugned order passed by the learned trial court is not sustainable in law and is fit to be quashed by this Court. In support of his above contention, he has placed reliance on judgments of this Court in the cases of **Surendra Choudhary vs. State of Bihar [2006(4) PLJR 147]**, **Ranjay Pandey vs. State of Bihar [2012(2) BLJ 285]**, **Karu Rawani vs. State of Bihar [2013(1) PLJR 175]**, **Lal Ji Singh vs. State of Bihar [2013(2) PLJR 483]**, and **Munna Singh vs. State of Bihar [2013(4) PLJR 447]**.

4. Per contra, learned Additional Public Prosecutor appearing on behalf of the State of Bihar has stoutly opposed the prayer made on behalf of the petitioner in the present application and has supported the impugned order. According to the learned Additional Public Prosecutor, the judgments cited by learned counsel appearing on behalf of the petitioner, referred to above, are not applicable in the facts and circumstances of the present



case. He has submitted that as a matter of fact the aforesaid two witnesses are not sought to be examined at the behest of the prosecution or the informant, rather they are sought to be examined as court witnesses for unfolding the truth and for a just decision of the criminal case pending against the petitioner. In support of his above contention, he has placed reliance on a judgment of Hon'ble Apex Court in the case of **U.T. of Dadra & Nagar Haveli vs. Fatehsinh Mohansinh Chauhan [(2006) 7 SCC 529]**.

5. In order to consider the rival submissions made on behalf of the parties, and in order to come to a conclusion as to whether the powers exercised by the learned trial court under Section 311 Cr.P.C. was bonafide one or with a view to fill up the lacunae of the prosecution case, it would be necessary to consider the scheme, scope and mandate of Section 311 Cr.P.C. The very opening line of Section 311 Cr.P.C. shows that this power can be exercised at any stage of any inquiry, trial or other proceeding under the Code of Criminal Procedure by any court. Exercise of powers under Section 311 Cr.P.C. is not dependent on the stage of inquiry or trial, but this power must be exercised for the just decision of the case. The issue involved herein is no longer a *res integra* and came up for consideration in several cases before this Court as also Hon'ble Apex Court. This Court itself had occasion to consider the scheme, scope and mandate of Section 311 Cr.P.C. at great detail in the case of **Rajesh Kumar @ Raj Kumar Yadav vs. State of Bihar [2012 (4) PLJR 338]**. Paragraph-16 of the aforesaid judgment would be relevant and is reproduced hereinbelow :-

“16. Section 311 Cr.P.C. is in two parts. The 1st part of Section 311 Cr.P.C. is enabling provisions and it



gives powers to any court to summon and examine any person as witness at any stage of trial or inquiry. Exercise of powers under 1st part of Section 311 Cr.P.C. is not dependent upon the stage of inquiry or trial, but that power has to be exercised for the just decision of the case. The second part of Section 311 Cr.P.C. is mandatory in nature, where the court is obliged to summon and examine or recall and re-examine any such person, if the evidence of such persons is essential for just decision of the case. The term 'just decision of the case' used u/s 311 Cr.P.C. does not necessarily mean that an accused put on trial has to be convicted by adopting any fair means or foul. The term 'just decision of the case' referred u/s 311 Cr.P.C., in my considered opinion, necessarily mean that the inquiry or trial with respect to an accused must be fair, impartial, and transparent one. By invoking jurisdiction under Section 311 Cr.P.C. the prosecution cannot be permitted to fill up its lacunae and inherent defects of the prosecution case."

6. Section 311 Cr. P.C. is in verbatim the reproduction of Section 540 of the Code of Criminal Procedure, 1898 (in short Old Code). The scheme, scope and mandate of Section 311 Cr.P.C. was considered by Hon'ble Apex Court at some length in the case of **Mohanlal Shamji Soni vs. Union of India [AIR 1991 SC 1346]**. Paragraphs 9 and 18 of the aforesaid judgment would be relevant and are reproduced herebelow:-

"9. The very usage of the words such as 'any Court', 'at any stage', or 'of any enquiry, trial or other proceedings', 'any person', and 'any such person' clearly spells out that this Section is expressed in the widest possible terms and do not limit the discretion of the Court in any way. However, the very width requires a corresponding caution that the discretionary power should be invoked as the exigencies of justice require and exercised judicially with circumspection and consistently with the provisions of the Code. The second part of the section does not allow for any discretion but it binds

and compels the Court to take any of the aforementioned two steps if the fresh evidence to be obtained is essential to the just decision of the case.”

XXXX

XXXX XXXX

XXXX

“18. The next important question is whether S. 540 gives the Court carte blanche drawing no underlying principle in the exercise of the extraordinary power and whether the said section is unguided, uncontrolled and uncannalised. Though S.540 (S.311 of the new Code) is, in the widest possible terms and calls for no limitation, either with regard to the stage at which the powers of the Court should be exercised, or with regard to the manner in which they should be exercised, that power is circumscribed by the principle that underlines S.540, namely, evidence to be obtained should appear to the Court essential to a just decision of the case by getting at the truth by all lawful means. Therefore, it would be borne in mind that the aid of the section should be invoked only with the object of discovering relevant facts or obtaining proper proof of such facts for a just decision of the case and it must be used judicially and not capriciously or arbitrarily because any improper or capricious exercise of the power may lead to undesirable results. Further, it is incumbent that due care should be taken by the Court while exercising the power under this section and it should not be used for filling up the lacuna left by the prosecution or by 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 rival side and further the additional evidence should not be received as a disguise for a retrial or to change the nature of the case against either of the parties.”

7. The scheme and mandate of Section 311 Cr.P.C. came up for consideration once again before Hon’ble Apex Court in the cases of **Zahira Habibullah Sheikh vs. State of Gujarat** [AIR 2006 SC 1367 = 2006 (3)PLJR 83(SC)] and **Iddar**



vs.Aabida [AIR 2007 SC 3029 =2007 Cri.L.J.4313], wherein it was held that Section 311 Cr.P.C. is not limited only for the benefit of the accused, and the exercise of such powers by the court to summon witnesses shall not be improper merely on the ground that evidence support the case of the prosecution and not that of the accused. In the opinion of Hon'ble Apex Court, the power under this Section is very wide and calls for no limitation. However, the Hon'ble Apex Court has cautioned that "the Section confers a very wide power on the court on summoning witnesses, the discretion conferred is to be exercised judiciously, as the wider the power the greater is the necessity for application of the judicial mind."

8. The factual matrix of the present case is almost similar and identical with that of the case in **U.T. of Dadra & Nagar Haveli vs. Fatehsinh Mohansinh Chauhan** (supra). In that case, the learned Sessions Judge had in exercise of his powers under Section 311 Cr.P.C. had summoned the District Collector for his examination as a court witness when evidence of both sides were closed and statement of the accused persons were recorded in terms of Section 313 Cr.P.C. The order passed by the learned Sessions Judge was assailed before the Bombay High Court on the ground that if that order is allowed to stand, then this will fill up the lacunae in the prosecution case. The High Court allowed the petition and set aside the order of the trial court. Finally the matter travelled upto the Apex Court, wherein the law has been laid down in paragraphs 15 and 17 of that judgment. For better appreciation, paragraph 15 and relevant portion of paragraph 17 of the said judgment are reproduced hereinbelow:-

"15. A conspectus of authorities referred to above would show that the principle is well settled that the



exercise of power under section 311 CrPC should be resorted to only with the object of finding out the truth or obtaining proper proof of such facts which lead to a just and correct decision of the case, this being the primary duty of a criminal court. Calling a witness or re-examining a witness already examined for the purpose of finding out the truth in order to enable the court to arrive at a just decision of the case cannot be dubbed as “filling in a lacuna in the prosecution case” unless the facts and circumstances of the case make it apparent that the exercise of power by the court would result in causing serious prejudice to the accused resulting in miscarriage of justice.”

XXXXX

XXXXXX

XXXXXX

“17.....In such circumstances if the learned Sessions Judge was of the opinion that in order to find out the truth, the evidence of the Collector was necessary, no exception can be taken to the course adopted by him. It was for the learned Sessions Judge to decide whether for just and fair decision of the case, the evidence of the Collector is necessary or not and he having come to a conclusion that the evidence of the Collector was necessary for just and fair decision of the case, the order passed by him could not have been set aside by the High Court on the ground that it would amount to filling in a lacuna in the prosecution case. We are clearly of the opinion that in the facts and circumstances of the case, the examination of the then Collector, Dadra & Nagar Haveli cannot be terms as filling in lacuna in the prosecution case. The learned Sessions Judge rightly observed that the evidence of the Collector will not cause any prejudice to the respondent as he had himself pleaded alibi and had led evidence to substantiate the same. We are, therefore, of the opinion that the High Court clearly erred in setting aside the order passed by the learned Sessions Judge.”

9. Now, coming to the present case, this Court finds that it is true that in the light of the direction issued by this Court earlier the prosecution evidence as also defence evidence were



closed and the statements of the accused were recorded under Section 313 Cr.P.C. The arguments had already commenced, but the learned trial court while scrutinizing the evidence on record came to a finding that the entire prosecution version is based on the telephonic information given by Ramashray Singh and his wife Sita Devi, but the aforesaid Ramashray Singh and Sita Devi were not examined either on behalf of the prosecution or on behalf of the defence. Therefore, the learned trial court in order to unfold the truth and for the just decision of the criminal case pending against the petitioner came to a conclusion that examination of the aforesaid two witnesses are necessary. Therefore, he decided to exercise his powers under Section 311 Cr.P.C. and summoned those two witnesses for their examination as court witnesses. The judgments cited by the learned counsel appearing on behalf of the petitioner, which have been referred to above, cannot be applied in the factual matrix of the present case, since in almost all the aforesaid judgments petitions were filed belatedly either by the prosecution or by the accused and in that background principles have been enunciated by this Court. In the present case, powers have not been exercised at the behest of the prosecution or the informant rather power has been exercised suo motu by the learned trial court for the ends of justice. The plea taken by learned counsel appearing on behalf of the petitioner that this will fill up the lacunae in the prosecution case seems to be completely misconceived. Examination of the aforesaid two witnesses is essential for unfolding the truth and for coming to a just conclusion in the criminal case, as on the basis of their information the F.I.R. was lodged by the uncle of the deceased. The impugned order passed by the learned trial court cannot be

legally faulted in view of the principles enunciated by the Hon'ble Apex Court in the cases, which have been referred to above.

10. For the reasons recorded above, this Court is not inclined to interfere with the impugned order dated 10.6.2013 passed in Sessions Trial No.204 of 2011, arising out of Muffasil P.S. Case No.299 of 2010 by learned Additional Sessions Judge I, Begusarai. However, before parting with this judgment/order, this court would like to direct the learned trial court to conclude the trial of the petitioner at an earliest possible time. In compliance of the order dated 10.4.2013 passed by this Court, the learned trial court has submitted its report stating therein that he shall make all endeavours to conclude the trial of the petitioner within a period of three months. Hence the trial court shall be obliged to conclude the trial of the petitioner within a maximum period of three months from the date of receipt/production of a copy of this order. The parties shall be obliged to co-operate for early conclusion of the trial.

11. In the result, the application has to fail, and is, accordingly, dismissed, but with the observations and directions made above.

12. Let this order be communicated to the learned trial court without any unnecessary delay.

(Birendra Prasad Verma, J)

mr.l.
A.F.R.