

NAFR

**HIGH COURT OF CHHATTISGARH, BILASPUR****CRMP No. 610 of 2016**

- Chhatram S/o Late Bulthuram Tandon Aged About 52 Years R/o Village Mulmula, Police Station Mulmula, District Janjgir Champa, Chhattisgarh.

---- **Petitioner****Versus**

- State Of Chhattisgarh Through Its District Magistrate Officer District Janjgir Champa, Offence Registered At Station House Officer, Police Station Akaltara, District Janjgir Champa, Chhattisgarh.

---- **Respondent**


---

For Petitioner : Shri Ravi Maheshwari, Advocate  
 For Respondent/State: Smt. M. Asha, Panel Lawyer

---

**Hon'ble Shri Justice P. Sam Koshy****Order On Board****20/06/2016**

1. Challenge in this present petition is to the order dated 23.05.2016 passed by the Additional Sessions Judge (F.T.C.), Janjgir, Dist. Janjgir-Champa in Sessions trial No. 47/2014. By the said impugned order, the Court below has rejected the application seeking for re-cross-examination of the prosecution witnesses filed under Section 311 of the Criminal Procedure Code (for short 'the Code')
2. Counsel for the petitioner submits that it is a case where the application under Section 311 of the Code filed by the prosecution was initially allowed and subsequently the petitioner's witnesses and the prosecution witnesses were re-examined and discharged and on behalf of defence, i.e., the present petitioner had subsequently moved an application under Section 311 of the Code seeking for re-cross-examination of the prosecution witnesses.
3. Counsel for the petitioner further submits that rejection of the application

under Section 311 of the Code by the Court below is bad in law for the reason that it ought to have appreciated the material available on record and that it had already allowed the application under Section 311 of the Code filed by the prosecution on an earlier occasion, but, when such application has been moved by the defence, the Court below has wrongly rejected the application, and therefore, the impugned order deserves to be set aside and the application under Section 311 of the Code has to be allowed.

4. On perusal of the record, particularly, in the context of the submissions made by the counsel for the petitioner, what is reflected from the record as also mentioned in the impugned order is that the reason shown in the application under Section 311 of the Code by the petitioner was that the counsel for the petitioner had not properly cross-examined the prosecution witnesses and certain important questions more had to be put. The application further referred to the fact that the lawyer subsequently engaged by the petitioner was more senior in profession than the earlier lawyer engaged by him, and therefore, the lapse could be detected and which need to be corrected, therefore, the application under Section 311 of the Code has been filed. A point to be noted is the fact that the said application was moved after closing of the evidence by the prosecution as well as by the defence and it was at that stage that earlier lawyer was changed. So far as the Section 311 of the Code is concerned, the provision of law is very clear that the said provision can be invoked only in case if the Court finds that the calling of the witness is essential. However, it also does not mean that just because there is an application under Section 311 of the Code made, the same has to be allowed mechanically calling for the re-examination of the witnesses. There has to be cogent, justified and bona fide reasons to satisfy the Court for the calling of the said witnesses. In the instant case, the ground assigned is that since there is a new lawyer engaged by the accused and the new lawyer more senior in profession as compared to the earlier lawyer and according to the new lawyer certain more questions ought to

have been put to the witnesses, therefore, it has compelled the petitioner to move an application under Section 311 of the Code. This literally means the petitioner wants to now improve upon his case after studying the entire prosecution as well as defence statements, which perhaps would not be permissible under the powers of Section 311 of the Code. In the opinion of this Court, an application under Section 311 of the Code cannot be and should not be entertained only because there is a change in the counsel appearing for the accused and the subsequent lawyer finds that the earlier lawyer had not conducted the case properly on behalf of the petitioner/accused.

5. In the opinion of this Court, granting re-cross-examination of the prosecution witnesses is not all justified. Proceeding under Section 311 of the Code cannot be recalled.
6. In the opinion of this Court, the Court below has not committed any error of law while rejecting the application under Section 311 of the Code. Even otherwise, the reasons assigned by the petitioner in the application is not at all justified reasons.
7. The petition is accordingly dismissed being devoid of merit.

Sd/-  
**(P. Sam Koshy)**  
Judge