

NAFR**HIGH COURT OF CHHATTISGARH, BILASPUR****Criminal Revision No. 861 of 2016**

1. Saroj Badhai son of Dasrath Badhai, aged about 40 years, R/o Duwari Bhukta, PS Amabhawana, District Bargarh (Odisha)
2. Mohan Lal Yadav son of Chamara Yadav, aged about 59 years, R/o Bade Haradi, Garjanpath, PS Pusore, District Raigarh (CG)

---- Applicants**Versus**

State of Chhattisgarh through Police Station Pusore, District Raigarh, CG

---- Respondent

For Applicant	: Shri N. K. Chatterjee, Advocates
For Respondent/State	: Shri Rajendra Tripathi, P.L.

Hon'ble Shri Justice P. Sam Koshy**Order On Board****09/09/2016**

The present revision petition has been filed challenging the order dated 21.04.2016 passed by the Special Judge (NDPS Act) Raigarh in Special Case No. 10/2015 whereby the application under Section 311 CrPC preferred by the petitioners has been rejected.

2. Facts in brief are that the applicants are being prosecuted before the Court of Special Judge (NDPS Act), Raigarh under the provisions of NDPS Act. In the instant case, the prosecution witnesses were being examined before the Court below and the material witnesses i.e. Investigating Officer PW-5 Vivekanand and PW-4 Tikeshwar Patel were examined on 01.12.2015 and they were also effectively cross-examined by the applicants. However, subsequently on 05.01.2016 an application under Section 311 CrPC was moved on behalf of the applicants seeking for recalling the witnesses PW-4 &

PW-5 for cross-examination on the ground that the counsel appearing on behalf of the applicants was engaged on the same day i.e. 01.12.2015 and therefore he had cross-examined the witnesses without much preparation and in the process, certain vital questions have been left which had to be asked during cross-examination.

3. The Court below vide impugned order dated 21.04.2016 rejected the said application on the ground that on perusal of the cross examination itself shows that the applicants' counsel had exhaustively cross examined the two witnesses and that under the provisions of Section 311 CrPC the party cannot be permitted to improve upon their case after the witnesses have already been examined and discharged.

4. Having perused the record and also appreciating the submissions made by the counsel for the applicants it does not appear that the counsel appearing on behalf of the accused persons was not prepared with the case as the nature of cross-examination itself reflects that the witnesses have been exhaustively cross examined. It appears that the subsequent application has been filed only after the counsel for the applicants realized his mistake of failing to ask certain more questions which had to be asked at the relevant point of time.

5. The law with regard to the provision of Section 311 CrPC is by now well established. It is settled position of law that the said section cannot be invoked so as to improve the case of the defence by seeking recalling of the witnesses by further cross-examination. The applicants had been granted sufficient opportunity for cross examination which they availed and exhaustively cross examined the witnesses and therefore, only to improve the case of the defence, the applicants cannot be permitted to recall the witnesses for cross-examination who have already been examined and cross examined.

6. Thus, in the opinion of this Court, the Court below does not appear to

have committed any error of law while rejecting the application under Section 311 of CrPC.

7. The instant Criminal Revision being devoid of merit deserves to be and is accordingly dismissed.

Sd/-
(P. Sam Koshy)
JUDGE