

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Revision No.1130 of 2015**

1. Anil Kumar S/o Mangelal Rana Aged About 42 Years (Wrongly Mentioned In Chargesheets) Occupation - Travel Agent Caste - Jaat, R/o A- 24, Mahavir Encleve Palam Road Delhi P.S. Dabdi Distt. Delhi.
2. Karan Kumar S/o Nagesh Kumar Aged About 19 Years (Wrongly Mentioned In Chargesheet), Occupation Driver, R/o Madhu Vihar Gali No. 4 House No. 232 New Delhi P.S. Dabdi Distt. New Delhi.
3. Anil Kumar S/o Late Devraj Singh Aged About 35 Years R/o R.Z.E. 36, Block- E, Chankya Palace Part 1 New Delhi P.S. Dabdi, Distt. New Delhi Civil & Rev. Distt. New Delhi.

---- Applicants/accused

Versus

State Of Chhattisgarh Through Aarakshi Kendra Kotwali Jagdalpur, Distt. Bastar Chhattisgarh.

---- Respondent

Shri Vikas Shrivastava, counsel for the applicants.
Smt. M. Asha, Panel Lawyer for the State/respondent.

Hon'ble Shri Justice Chandra Bhushan Bajpai**Order On Board****08.3.2016.**

Heard.

2. The issue involved in the instant petition is that whether by allowing application under Section 311 of the Code of Criminal Procedure, 1973 (for short 'the Code') filed on behalf of the prosecution, order dated 07.12.2015 passed by the court below is illegal improper or irregular. As per the facts of the matter, in a Special Case No.08/14 (State Vs. Anil Kumar & 02 Others) under the provisions of Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'the Act of 1985'), Bastar at Jagdalpur, during the trial an application under Section 311 of the Code has been

filed on behalf of the prosecution and prayed that names of two important witnesses, i.e. Minakshi Chandel and Jaykrishan were left bonafidely in the list of prosecution witnesses and the prosecution wants to call them and examine them for the proper adjudication of the matter. The Court below vide order dated 07.12.2015 allowed the said application and ordered that Minakshi Chandel and Jaykrishan be called through summon for their evidence. Against the said order, the applicant has filed the instant criminal revision wherein the ground taken that the Court below erred in allowing the application under Section 311 of the Code and the power given to the Court to call the witnesses under the provisions only be used for fair and just decision of the case. Name of the witnesses were not included in the list of witnesses given on behalf of the prosecution in the trial programme and after recording the statement of the accused applicants under Section 313 of the Code, the Court ordered for the examination of those witnesses which is improper and caused serious prejudice to the applicants. The prosecution has taken sufficient opportunity to produce their witnesses and recording their statement and thereafter to defeat the defence available to the applicants, the application under Section 311 of the Code has been allowed and the trial Court ordered for evidence of those witnesses, hence, it is prayed that the revision may be allowed and impugned order dated 17.02.2015 may be set aside.

3. On behalf of the respondent/State, the petition is opposed orally.

4. Heard learned counsel for the applicants, perused the documents annexed and the impugned order dated 07.12.2015.

5. Learned counsel for the applicants supported the entire ground taken in the instant petition and submitted that as per the facts of the case, witness Minakshi Chandel has taken the samples for FSL. The witness Jaykrishan has prepared the informant panchnama. It is further submitted that no reason was shown in application under Section 311 of the Code as to why the prosecution wants to examine those witnesses. It is further submitted that provisions of Section 311 of the Code is consisting of two limbs. For the first limb the trial Court suo moto can call any witnesses to secure the ends of justice and on the other hand, if any application has been preferred then the Court has to dispose of the same as per the settled law. Learned counsel for the applicants placed reliance on **(2013) 5 SCC 741, Natasha Singh Vs. Central Bureau Of Investigation**, wherein the Hon'ble Apex Court appreciated the matter and in para 9 of the judgment reiterated the law which is as under:

“9. In *Mir Mohd. Omar v. State of WB* (1989) 4 SCC 436, this Court examined an issue wherein, after the statement of the accused under Section 313 CrPC had been recorded, the prosecution had filed an application to further examine a witness and the High Court had allowed the same. This Court then held, that once the accused has been examined under Section 313 of the CrPC, in the event that liberty is given to the prosecution to recall a

witness, the same may amount to filling up a lacuna existing in the case of the prosecution and therefore, that such an order was uncalled for.”

6. Learned counsel for the applicants submits that as the case law cited is applicable to the present matter, the application may be allowed and the impugned order dated 07.12.2015 be set aside and the Court below be directed to proceed further.

7. A perusal of the authority given to the Court below under the provisions of Section 311 of the Code goes to show that if examination of any witness is essential for the just decision of the case, the court may order to call that witnesses. If for the sake of argument reason is not mentioned even then the Court may examine the matter under the authority of Section 311 of the Code and can order to call for any witnesses if it goes to show that his examination is essential for the just decision of the case. This Court has to see what illegality or impropriety or incorrectness has been committed by the trial Court. The trial Court has authority to call any witness if it is essential for the just decision of the case. After perusal of the impugned order dated 07.12.2015, after a detailed appreciation the Court ordered for evidence of those witnesses as they are the witnesses of important documents.

8. The case law cited is not applicable in the present matter as this not a case where the trial Court has to prejudge the evidence. The role of the said witnesses is already in the charge sheet though their names were not in the list of witnesses. But as they

witnessed the documents and witnessed some facts, by calling those witnesses, in the considered view this Court, there is no illegality or impropriety or incorrectness committed by the court below. The case law cited is of no help to the present matter.

9. On due consideration, I do not see any illegality or impropriety committed by the Court below. Consequently, the instant revision is dismissed at the motion stage itself as the same is without any substance. Petition dismissed.

Sd/-
(Chandra Bhushan Bajpai)
JUDGE