

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRMP No. 530 of 2016**

Purendra Kumar Sahu S/o Harish Kumar Sahu Aged About 39 Years
R/o Village Tilkhairi, Tahsil And P.S. Gurur, District Balod Chhattisgarh.

---- Petitioner**Versus**

State Of Chhattisgarh Through Station House Officer, Police Station
Gurur, District Balod Chhattisgarh.

---- Respondent

For Petitioners
For Respondent1

: Mr. Avinash Chandra Sahu, Adv.
: Mr. S.C. Khakhariya, Dy. AG.

Order On Board**11/05/2016**

1. Heard. Issue notice.
2. Learned State counsel accepts notice on behalf of the State.
3. Heard the matter on motion and also on maintainability of the instant CRMP.
4. Facts of the case in brief are that Sessions Trial No. 1/13 (State -v- Purendra Kumar Sahu) is pending before the 1st Additional Sessions Judge, Balod for trial. In the said trial, prosecution had filed an application under Section 311 of the Code of Criminal Procedure, 1973 (in brevity 'Cr.P.C.') dated 30-6-2015 to call for the handwriting expert for evidence as the documents in relation to the report of the handwriting are already annexed in the charge sheet. The court below vide order dated 15-10-2015 held that as the trial against the petitioner is for offence under Sections 420, 306, 467, 468 and 471 of the Indian Penal Code and as the report of the handwriting expert is submitted on 15-5-2015, the said witness is essential for just decision of the case. Consequently, the trial Court allowed the said application and directed for issuance of summon to the handwriting expert for examination as witness. Against said order, the petitioner/accused has filed instant CRMP invoking the jurisdiction under Section 482 of the Cr.P.C. wherein the grounds taken are that the orders passed by the

trial Court is illegal, improper and incorrect therefore liable to be set aside as all the prosecution witnesses have been examined and at the stage of examination of witnesses of defence, calling new witness of the prosecution is illegal. The prosecution cannot be allowed to fill lacuna by filing application under Section 311 of the Cr.P.C. Report has been filed at very belated stage and summoning the handwriting expert may cause serious prejudice to the right of the petitioner hence it is prayed that the impugned order dated 15-10-2015 may be quashed.

5. Learned counsel for the petitioner entirely supported the grounds taken in the petition and submitted that instant CRMP may be admitted for hearing and heard accordingly.
6. For the purpose of appreciation for admission, I have perused the impugned order dated 15-10-2015 and the instant CRMP.
7. For relevance, section 311 of the Cr.P.C. reads as under:-

“311. Power to summon material witness, or examine person present.- Any Court may, at any stage of any inquiry, trial or other proceeding under this Code, summon any person as a witness, or examine any person in attendance, though not summoned as a witness, or recall and re-examine any person already examined; and the Court shall summon and examine or recall and re-examine any such person if his evidence appears to it to be essential to the just decision of the case.”

8. From perusal of the authority given to the trial court it appears that the trial court may summon any person as a witness if his evidence appears to it to be essential for just decision of the case. Looking to the charges for which the petitioner is facing trial and also with the fact that the report of the handwriting expert has been filed, examination of said handwriting expert prima facie appears to be essential for just decision of the case. The petitioner has an opportunity to cross-examine the witness to defend himself. As per law, there is no rider that after examination of prosecution witness, the court cannot invoke authority granted under Section 311 of the Cr.P.C.

9. Looking to entire facts and circumstances of the case, in the considered view of this Court, the trial Court has not commuted any illegality, impropriety and incorrectness by invoking the jurisdiction under Section 311 of the Cr.P.C. by calling the handwriting expert as the same is essential for just decision of the case.
10. Consequently, instant CRMP being sans substance deserves to be and is hereby dismissed at motion stage itself.

Sd/-
(Chandra Bhushan Bajpai)
Judge