

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Revision No.795 of 2016**

Madhav Bareth S/o Mahesh Bareth Aged About 30 Years R/o Village-Lodhiya,
Police Station-Baramkela, District-Raigarh, Chhattisgarh

---- Applicant

Versus

State Of Chhattisgarh Through: Station House Officer, Police Station-
Baramkela, District-Raigarh, Chhattisgarh

-----Non-Applicant

For Applicant:	Shri Shikhar Shamra, Advocate.
For Non-Applicant/State:	Shri Vaibhav A. Goverdhan, Panel Lawyer.

Single Bench: **Hon'ble Shri P. Sam Koshy, J**
Order On Board

26.8.2016

1. The present Revision has been filed assailing the order dated 4.7.2016 passed by Additional Sessions Judge, Sarangarh, Distt. Raigarh in Sessions Trial No.21/2015. By the said impugned order, the Court below has rejected the application under Section 231 Cr.P.C r/w Section 137 of the Evidence Act filed by the Applicant.

2. The case in brief is that the Applicant in the instant case has been charged for the offence under Sections 302 and 201 IPC and for which the trial was proceeding before the Court of Additional Sessions Judge, Sarangarh. On 11.5.2016, the matter was fixed for the prosecution witness and on which date, the doctor who had conducted the postmortem of the deceased Dr. Sanjay Patel, PW-12 (Medical Officer) was present before the Court for his cross-examination. However, on the said date, the said doctor

was not examined by the defence on the ground that the Counsel representing the accused was not feeling well though he was present in the Court during the period when the examination-in-chief was being recorded. At the request of the State Counsel, the matter was adjourned for 2.6.2016. On 2.6.2016 also, the said witness Dr. Sanjay Patel, PW-12 was present before the Trial Court for his cross-examination. On the said date also, the Counsel engaged by the Applicant did not choose to cross-examine him on account of the fact that according to him, he was engaged in some other more urgent work and therefore, he did not appear for cross-examination of the said witness. Later on, another Counsel entered appearance on behalf of the accused and cross-examined the said witness on 2.6.2016. After the cross-examination was conducted on 2.6.2016, the Applicant further on 4.7.2016, moved an application under Section 231 Cr.P.C r/w Section 137 of the Evidence Act seeking for recalling of the witness - Dr. Sanjay Patel, PW-12 for further cross-examination. According to Counsel for the Applicant, the recalling of the said witness was necessary for the reason that the Counsel who had cross-examined Dr. Sanjay Patel, PW-12 has not been able to effectively cross-examine the prosecution witness and certain vital questions have been left by him and therefore, it was necessary that the earlier counsel who was representing the accused and who was more aware of the facts and details of the case may be permitted to further cross-examine the said witness.

3. Learned Counsel for the Applicant relied upon the judgments in **(2006) 3 Supreme Court Cases 374** (*Zahira Habibullah Sheikh (5) and Another vs. State of Gujarat and others*), **(2008) 11 Supreme Court Cases 108** (*Godrej*

Pacific Tech. Limited vs. Computer Joint India Limited) and **(2012) 7**

Supreme Court Cases 56 (*P. Sanjeeva Rao vs. State of Andhra Pradesh*)

wherein the Supreme Court in all the cases have specifically laid down the principle that the object of an application under Section 311 Cr.P.C is to provide fair and sufficient opportunity for the defence to lead evidence and to cross-examine the prosecution witnesses.

4. Learned State Counsel however opposing the Petition submits that the present is not a fit case calling for any interference with the impugned order for the reason that the Court below has specifically dealt with the application of the Applicant and had rejected the same giving cogent and justified reasons for allowing the same. According to him, it is a not a case where sufficient opportunity was not granted to the Applicant. He submits that in fact the Applicant has been granted more than sufficient opportunity and the witness who is being sought to be recalled has in fact been examined and cross-examined in detail by the defence witness and as such there is no scope left for recalling the said witness.

5. Having considered the facts and circumstances of the case and on perusal of the record, what clearly reflects is that the witness Dr. Sanjay Patel, PW-12 was in fact on 11.5.2016, examined in examination-in-chief and on the said date, though the Counsel for the defence was present in the Court but he took time to cross-examine him. The Court below further adjourned the matter to 2.6.2016 and on the said date, again the Counsel earlier engaged by the accused did not, for some reasons best known to him, cross-examine the prosecution witness and in the process, a new Counsel was engaged and the new Counsel elaborately cross-examined the witness on 2.6.2016. It

is subsequently that the earlier Counsel again enters appearance and moves an application under Section 231 Cr.P.C r/w Section 137 of the Evidence Act saying that the cross-examination of Dr. Sanjay Patel, PW-12 has not been effectively done and there were many questions which were yet to be put to the witness which during the course of the cross-examination have not been able to be put and therefore, it was necessary for further cross-examination of the said witness.

6. The present is a case where the records and charge sheets very clearly reflect that the Applicant in fact was granted sufficient opportunity for cross-examination of Dr. Sanjay Patel, PW-12. The Court below has accommodated the Counsel for the Applicant to cross-examine him at a latter date for the reason that he was not feeling well on the first occasion i.e. on 11.5.2016. Subsequently, on 2.6.2016, when the matter was again kept for cross-examination, even on that date, the Counsel who was representing the accused did not think it proper for further cross-examination of the prosecution witness and for some reasons, on the ground of having some other urgent work, he did not choose to cross-examine the witness and the accused person got the said witness examined by another Counsel and he has been examined exhaustively. Section 231 Cr.P.C deals with the evidence of the prosecution and sub-Section (2) of Section 231 Cr.P.C deals with the discretionary power conferred to him before the cross-examination of the witness who may recall any witness for further cross-examination in a particular case. Though the application has been filed under Section 231, it appears that the Applicant in fact intended to invoke the power under Section 311 Cr.P.C for recalling of the witness. Both Sections 231 as well as 311

Cr.P.C deals with a case where discretionary power has been given to the Court below in a case if they so feel that sufficient ground has been made out for recalling of a witness and in the opinion of the Court, it would be essential for the just decision of the case, then the Court can order for recalling of a particular witness.

7. In the instant case, a perusal of the order sheet clearly reflects that the Court below had in fact granted sufficient opportunity for cross-examination of the witness and which has also been done of the witness. The application under Section 231 or for that matter, 311 Cr.P.C cannot be entertained on the ground of improvement of the case of the defence only on the ground that the cross-examination of the witness earlier done was not properly conducted by a particular Counsel nor can it be permitted to fill up lacuna.

8. It is also not the case of the Applicant that the Counsel engaged by him at the first instance itself was denied the chance of cross-examination. It is in fact the case where though he was present during the entire examination-in-chief, but on the ground of not feeling well, the cross-examination was delayed for a latter date and on that date also, the said Counsel engaged by the accused did not choose it proper to cross-examine the witness who, in spite of the fact that he is a Government Medical Officer was not present in the Court and therefore, the defence got the witness examined through a different Counsel.

9. In the opinion of this Court, it is not a case where it can be said that the Applicant has been denied fair opportunity of defence in the course of cross-examination of Dr. Sanjay Patel, PW-12. If we take into consideration the factual background of the case, it clearly would reflect that the three

judgments cited above by the Applicant were under entirely different factual background and those judgments have also been decided in the peculiar facts of the case therein. It cannot be made applicable in the given facts of the present case and therefore, those judgments are distinguishable in the facts of the present case.

10. In the opinion of this Court, no strong case has been made out. Accordingly, the instant Revision, being devoid of any merits, the same is accordingly dismissed.

Sd/-

(P. Sam Koshy)

JUDGE