

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Revision No.378 of 2016**

Harichand S/o Khelawan Meravi Aged About 22 Years R/o Khairbana Police Station Sahaspur Lohara, District Kabirdham Chhattisgarh

---- Applicant

Versus

State Of Chhattisgarh Through Station House Officer, Police Station Sahaspur Lohara, District Kabirdham Chhattisgarh

-----Non-Applicant

For Petitioners:

Shri Goutam Khetrapal, Advocate.

For Respondent/State:

Shri Rajendra Tripathi, Panel Lawyer.

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

26.9.2016

1. The present Revision has been preferred against the order dated 22.4.2016 passed by the Additional Sessions Judge (FTC), Kabirdham in Special Sessions Trial No.49/2016 whereby the Court below has rejected the application under Section 311 Cr.P.C.
2. Learned Counsel for the Applicant submits that on 5.4.2016, the present Applicant/accused had moved an application under Section 311 Cr.P.C seeking for re-calling of the prosecution witnesses No.1 to 4 and 7 for further cross-examination.
3. The Court below, vide order dated 22.4.2016, while rejecting the said application, had observed that the Applicant/accused has not mentioned any specific reasons for recalling of these witnesses and there is no justified explanation or a plausible reason assigned in the said application.
4. Assailing the said order, learned Counsel for the Applicant submits that the Court below should have taken into consideration that during the cross-

examination of these witnesses, learned Counsel appearing for the defence has not put certain relevant and material questions which ought to have been put by him and by virtue of which, the right of the Applicant shall get prejudiced adversely.

5. According to him, the Court below ought to have taken more pragmatic view by considering the application under Section 311 Cr.P.C and should have allowed the said application as no prejudice would have been caused to the case of the prosecution in case these witnesses are recalled for cross-examination. He further submits that in the application, it is mentioned that he was ready to bear expenses of these witnesses who are to be recalled.

6. Learned State Counsel opposing the Petition submits that a plain reading of the application itself would show that there was no reason assigned or explanation given by the Applicant for which he wanted further cross-examination of the prosecution witnesses. He further submits that the law so far as an application under Section 311 Cr.P.C is concerned, it is settled that the said application cannot be allowed to fill up the lacuna in the case of the defence. He relied upon **(2013) 5 Supreme Court Cases 741** (*Natasha Singh vs. Central Bureau of Investigation*) and **(2012) 7 Supreme Court Cases 56** (*P. Sanjeeva Rao vs. State of Andhra Pradesh*).

7. Having considered the submissions put forth by either side and on perusal of the record, it would be trite at this juncture to refer to the decision of the Supreme Court in the case of *Natasha Singh vs. Central Bureau of Investigation* (supra) wherein paragraph-15 reads as follows:-

“15. The scope and object of the provision is to enable the court to determine the truth and to render a just decision after discovering all relevant facts and obtaining proper proof of such facts, to arrive at a just decision of the case. Power must be exercised judiciously and not capriciously or arbitrarily, as any improper or capricious exercise of

such power may lead to undesirable results. An application under Section 311 Cr.P.C must not be allowed only to fill up a lacuna in the case of the prosecution, or of the defence, or to the disadvantage of the accused, or to cause serious prejudice to the defence of the accused, or to give an unfair advantage to the opposite party. Further, the additional evidence must not be received as a disguise for retrial, or to change the nature of the case against either of the parties. Such a power must be exercised, provided that the evidence that is likely to be tendered by a witness, is germane to the issue involved. An opportunity of rebuttal however, must be given to the other party. The power conferred under Section 311 Cr.P.C must therefore, be invoked by the court only in order to meet the ends of justice, for strong and valid reasons, and the same must be exercised with great caution and circumspection. The very use of words such as “any court”, “at any stage”, or “or any enquiry, trial or other proceedings”, “any person” and “any such person” clearly spells out that the provisions of this section have been expressed in the widest possible terms, and do not limit the discretion of the court in any way. There is thus no escape if the fresh evidence to be obtained is essential to the just decision of the case. The determinative factor should therefore be, whether the summoning/recalling of the said witness is in fact, essential to the just decision of the case.”

8. A plain perusal of the said order of the Supreme Court reflects that the Supreme Court has clearly held that the application under Section 311 Cr.P.C should not be entertained as a matter of routine and should not be allowed to fill up the lacuna of the defence. It has, in very categorical terms, held that the power under Section 311 Cr.P.C has to be exercised under great caution and circumspection. A similar view has also been taken by the Supreme Court in the case of **(2014) 13 Supreme Court Cases 59** (*Mannan Shaikh and Others vs. State of West Bengal and Another*). In the present case, all the witnesses who have been sought for being recalled for cross-examination have already been elaborately examined by the accused persons and it is subsequently that they intend to further cross-examine the same witnesses.

9. The view of the decision of the Supreme Court in the case of *Natasha*

Singh vs. Central Bureau of Investigation (supra) is squarely applicable to the facts of this case and this Court does not find any illegality or infirmity in the passing of the impugned order and the Revision Petition accordingly, being devoid of merits, the same is dismissed.

Sd/-

(P. Sam Koshy)

JUDGE

Priya