

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Miscellaneous Petition No. 927 of 2016**

- Dev Prasad Shrivastava S/o Shri Mahettar Lal Shrivastava Aged About 34 Years
R/o Village Salonikala, Thana Bilaigarh, Tahsil Bhatgaon, Civil & Revenue
District Baloda Bazar Bhatapara, Chhattisgarh.

---- Petitioner

Versus

- State Of Chhattisgarh Through The District Magistrate Baloda Bazar,
District Balodabazar Bhatapara, Chhattisgarh.

---- Respondent

For Petitioner
For Respondent/State

Shri Sunil Sahu, Advocate
Shri Vaibhav A. Goverdhan, Panel Lawyer

SB: Hon'ble Shri Justice P.Sam Koshy**Order On Board****03.10.2016**

1. The present petition under Section 482 Cr.PC has been filed assailing the order dated 12.08.2016 passed by the Sessions Judge Balodabajar in Criminal Revision No. 42/2016. Vide the said order the Revisional Court rejecting the Revision Petition has upheld the order dated 05.07.2016 passed by the Judicial Magistrate First Class Bhatgaon (in short 'the JMFC') in criminal Case No. 895/2010. Vide the said order an application under Section 311 Cr.P.C. moved by the prosecution has been allowed by the Judicial Magistrate First Class, Bhatgaon.
2. The brief facts relevant for the adjudication of the present case is that the Petitioner in the instant case was being prosecuted before the JMFC in

criminal case No. 895/2010 for the offence under Sections 420, 467, 468 and 471 of IPC. In the instant case after the charge sheet was filed the matter was taken up for evidence on behalf of the prosecution and in due course of time i.e. on 24.05.2016 two of the witnesses R.N. Mishra and Surit Sarthi were given up by the prosecution and on the same day i.e. on 24.05.2016 the evidence on behalf of the prosecution was closed and it was ordered for recording of statement of the accused under Section 313 CrPC on next date i.e. 15.06.2016. On 15.06.2016 the statement under Section 313 CrPC was recorded and on the same day the Applicant accused submitted that he does not intend to lead any evidence and the matter was fixed for pronouncement of judgment on 20.06.2016.

3. That on 20.06.2016 the Additional District Prosecution Officer appeared before the Court below and prayed for a short time to file appropriate application under Section 311 CrPC for recalling of a witnesses who had been given up earlier as evidence of the said witnesses would be vital for the prosecution for the proper adjudication of the present case. The said prayer by the prosecution was agreed and was granted 3 days time and accordingly fixed the case on 23.06.2016 on which date the prosecution filed an application under Section 311 CrPC and the Court granted time to the accused to file reply/objection to the said application. The applicant accused filed its objection to the said application and opposed the application and also questioned as to whether the prosecution can be granted time for examining their case particularly in the light of the fact that earlier the same witnesses had been given up by the prosecution and now they intend to recall the some witnesses after the arguments had been heard on either side. According to him the case of the Prosecution was

demolished at the time of final hearing which led to the prosecution think of moving such an application and therefore the prosecution may not be granted time to improve upon their case.

4. The Magistrate Court finally vide the order dated 5.7.2016 considering the relevancy of the said witness and also upon finding the submission put forth by the prosecution, allowed the application. Said order dated 5.07.2011 was put to challenge by way of a Criminal Revision No. 42/2016 before the Sessions Court, Balodabajar.
5. The Revisional Court also rejected the said Revision Petition upholding the order of the JMFC.
6. Learned Counsel for the applicant submits that these two orders passed by the Court below at the first instant by the Magistrate Court and subsequently by the Revisional Court are bad in law. The permission should not have been granted to improve upon their case after having adduced entire evidence and when the matter was also finally heard and thus the order being bad in law deserves to be set aside.
7. Learned Counsel for the Applicant further submits that it is a case where the original mark-sheet of the complainant which has been seized by the Applicant is not on record. It is only a photocopy which is on record and therefore the relevancy of the said witness would not be of any help. There would be no relevancy in calling the said witness in absence of original mark-sheet itself. Further he questions the time when the application was moved particularly where the Petitioner having already disclosed his defence in the course of the final hearing adduced before the Court below. The Prosecution had never taken efforts in curing the defects when they had the time for it and hence they cannot be now permitted to

fill up lacunae and thereby improve upon the case of the prosecution which otherwise is not permissible under provisions of Section 311 CrPC.

8. The State Counsel however opposing the Petition submits that there is no illegality or infirmity committed by the two courts below firstly by the Magistrate Court while allowing the application under Section 311 CrPC and secondly the Revisional Court while rejecting the revision upholding the order of the Magistrate. Learned State Counsel further submits that the order passed by the Revisional Court is a well reasoned and speaking order and does not warrant any interference invoking the extraordinary powers conferred upon this Court under Section 482 CrPC.
9. He further submits that no prejudice is being caused to the Petitioner accused as he shall get the sufficient opportunity of cross examining the prosecution witness and would also be entitled to adduce his defence witness if he so desires to rebut the statement made by the said witness Surit Sarthi. Thus prayed for rejection of the present Petition.
10. After hearing the rival contentions put forth on either side and perusal of the record would clearly reflect that undoubtedly the applicant is accused for offence under Sections 420, 467, 468 and 471 of IPC. It is also not in dispute that the prosecution evidence was undergoing and it is on 24.05.2016 when two of the witnesses who were summoned did not appear before the Court below when the prosecution had given up the two witnesses and closed the evidence of the prosecution and fixed for next date of hearing on 05.06.2016 for recording of the statement of the accused under Section 313 CrPC. On the same day the applicant accused closed his evidence and also submitted final argument. Thereafter, the case was fixed for final pronouncement of judgment on

20.06.2016.

11. A bare perusal of the provision under Section 311 CrPC by itself would clearly indicate that the powers conferred under the said act is that the Court at any stage of inquiry, trial or other proceeding can summon any person/witness to examine or recall or re-examine already examined if the evidence of the said witnesses was found to be essential for just decisions of the case.
12. The High Court of Madhya Pradesh in case of **Heeralal Alias Nimma vs State Of M.P.**¹ in very categorical terms held that the powers under Section 311 can be invoked at any stage of the inquiry or trial or other proceedings. In the instant case also when the matter was fixed for the pronouncement of the judgment on 20.06.2016. That as long as judgment was not pronounced it would remain to be considered a pending trial matter and in the said circumstances the Court below have rightly exercised its power under Section 311 CrPC.
13. So far as the relevancy of the said witnesses is concerned the fact that the said witness namely Surit Sarthi was a witness sought by the prosecution who on 24.05.2016 was given up as he did not appear before the Court on that date. Later on the prosecution felt it to be necessary to examine the said witness. After realizing the same they immediately moved the appropriate application which is also evidently clear from the order sheet dated 20.06.2016.
14. The request was made by the prosecution and time granted and matter was thereafter taken up on 23.06.2016 on which date the prosecution moved the application under Section 311 CrPC. Accordingly, we do not

1. 1997 2 CrLJ 634

find any illegality and infirmity on the part of the Magistrate in allowing the application under Section 311 CrPC. According to the Court there has been no prejudice caused to the Petitioner on the allowing of the application.

15. The Supreme Court in the case of **Mohanlal Shamji Soni v. Union of India**² also explained the principle of power of the Court to summon for any witness or recall any witnesses already examined even when the evidence of the prosecution side is closed.
16. On the basis of the analogy laid down by the Supreme Court, this Court does not find any error on the part of the Court below in allowing the application under 311 CrPC.
17. Accordingly, the present Petition being devoid of merits, stands rejected.

Sd/-

(P. Sam Koshy)
JUDGE

kishore

². 1991 Cri LJ 1521