

## **HIGH COURT OF CHHATTISGARH, BILASPUR**

### **CRMP No. 1625 of 2017**

Jeevan Singh Rajput, S/o. Ravichan Singh, Aged About 56 Years, R/o. Petulkapa, Police Station Pathariya, District Bilaspur, Chhattisgarh. Presently Deputy Secretary, General Administration Department, Mahanadi Bhavan, Mantralaya, (wrongly mentioned as Mangalam) Raipur, Chhattisgarh.

**---- Petitioner**

**Versus**

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

**---- Respondent**

**&**

### **CRMP No. 1627 of 2017**

Jeevan Singh Rajput, S/o. Ravichan Singh, Aged About 56 Years, R/o. Petulkapa, Police Station Pathariya, District Bilaspur, Chhattisgarh. Presently Deputy Secretary, General Administration Department, Mahanadi Bhavan, Mantralaya (wrongly mentioned as Mangalam) Raipur, Chhattisgarh.

**---- Petitioner**

**Versus**

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

**---- Respondent**

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| For Petitioner | : | Mr. A.S.Rajput, Advocate             |
| For Respondent | : | Mr. Anupam Dubey, Dy. Govt. Advocate |

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**Hon'ble Shri Justice Goutam Bhaduri**

### **Order On Board**

**21.11.2017**

1. Both the petitions are heard together and decided by this common order, as similar issues are involved.
2. CRMP No.1625/2017 is against the order dated 27.10.2017 passed in Criminal Revision No.57/2017 by the Sessions Judge, Baloda Bazar wherein the revision was dismissed against the order of the Judicial Magistrate First Class dated 24.08.2017 in Criminal Case No.236/2017 in between *State v. Babulal & Others*.  
CRMP No.1627/2017 is against the order dated 27.10.2017

passed in Criminal Revision No.58/2017 by the Sessions Judge Baloda Bazar wherein the order passed by the Judicial Magistrate First Class dated 24.08.2017 was affirmed, which was passed in Criminal Case No.237/2017 in between *State v. Babulal & Others*.

3. The petition is against dismissal of the application under Section 311 of Cr.P.C. which was filed at the stage of evidence on 17.08.2017. By such application, the petitioner sought for the witnesses who were examined namely : (1) S.N.Kupatar (2) L.D. Diwan (3) Ashok Kumar Sharma (4) Gulab Singh Tomar (5) Ramhaya Lal (6) Pratima Awasthi (7) G.R.Chandrakar (8) V.P. Tembular, on the ground that while they were cross-examined, the original documents were absent; consequently, effective cross examination could not be conducted. It is further submitted that the counsel who conducted the cross examination was junior to the original counsel, as such, a chance may be afforded to summon the witnesses again to re-examine the same. It is further submitted that the application by one of the co-accused in the similar like nature was allowed by an order dated 27.02.2017, therefore, similar order should have been passed in cases of the other accused, who sought for examination of the other witnesses.
4. Learned State counsel opposes the argument advanced by the learned counsel for the petitioner.
5. Hon'ble the Supreme Court in a case of ***Raja Ram Prasad Yadav v. State of Bihar*** reported in ***2013 AIR SC Weekly 4179*** has laid down the principles of Section 311 with respect to the power of the Court to summon, recall or re-examine any person. The following principles which are enumerated in para 23 are quoted herein below:

“23. From a conspectus consideration of the above decisions, while dealing with an application under Section 311 Cr.P.C., read along- with Section 138 of the Evidence Act, we feel the following principles will have to be borne in mind by the Courts:

- a) Whether the Court is right in thinking that the new evidence is needed by it? Whether the evidence sought to be led in under Section 311 is noted by the Court for a just decision of a case?
- b) The exercise of the widest discretionary power under section 311, Cr.P.C., should ensure that the judgment should not be rendered on inchoate, inconclusive speculative presentation of facts, as thereby the ends of justice would be defeated.
- c) If evidence of any witness appears to the Court to be essential to the just decision of the case, it is the power of the Court to summon and examine or recall and re-examine any such person.
- d) The exercise of power under section 311, Cr.P.C., should be resorted to only with the object of finding out the truth or obtaining proper proof for such facts, which will lead to a just and correct decision of the case.
- e) The exercise of the said power cannot be dubbed as filling in a lacuna in a prosecution case, unless the facts and circumstances of the case make it apparent that the exercise of power by the Court would result in causing serious prejudice to the accused, resulting in miscarriage of justice.
- f) The wide discretionary power should be exercised judiciously and not arbitrarily.
- g) The Court must satisfy itself that it was in every respect essential to examine such a witness or to recall him for further examination in order to arrive at a just decision of the case.
- h) The object of section 311, Cr.P.C., simultaneously imposes a duty on the Court to determine the truth and to render a just decision.

i) The Court arrives at the conclusion that additional evidence is necessary, not because it would be impossible to pronounce the judgment without it, but because there would be a failure of justice without such evidence being considered.

j) Exigency of the situation, fair play and good sense should be the safeguard, while exercising the discretion. The Court should bear in mind that no party in a trial can be foreclosed from correcting errors and that if proper evidence was not adduced or a relevant material was not brought on record due to any inadvertence, the Court should be magnanimous in permitting such mistakes to be rectified.

k) The Court should be conscious of the position that after all the trial is basically for the prisoners and the Court should afford an opportunity to them in the fairest manner possible. In that parity of reasoning, it would be safe to err in favour of the accused getting an opportunity rather than protecting the prosecution against possible prejudice at the cost of the accused. The Court should bear in mind that improper or capricious exercise of such a discretionary power, may lead to undesirable results.

l) The additional evidence must not be received as a disguise or to change the nature of the case against any of the party.

m) The power must be exercised keeping in mind that the evidence that is likely to be tendered, would be germane to the issue involved and also ensure that an opportunity of rebuttal is given to the other party.

n) The power 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 care, caution and circumspection. The Court should bear in mind that fair trial entails the interest of the accused, the victim and the society and, therefore, the grant of fair and proper opportunities to the persons concerned, must be ensured being a constitutional goal, as well as a human right.

6. Perusal of the order of revisional Court would reveal that the witnesses who were sought for examination, they were examined in between the period 15.05.2014 to 13.02.2017. In the period in between 15.05.2014 to 13.02.2017, 18 witnesses were examined in the Criminal Case No.236/2017 whereas in Criminal Case No.237/2017 in between 15.05.2014 to 10.03.2017, 30 witnesses were examined and during such examination for long period no whisper was made about the fact that the petitioner was unable to cross examine the witnesses effectively or made any objection during such long period. No objection was made with manner & nature of conduct of case by counsel. It appears after long period such application was filed when the trial Court started hearing with short intervals. This fact cannot be ignored that Criminal Case is pending since 2002 and if the like nature of the applications are allowed wherein no specific reason has been assigned for recalling of witnesses for further cross-examination only at the behest of the some of the accused, the trial will not end to infinity.
7. It is trite law that Court in specific cases allow the recalling of witnesses in exercise of power under Section 311 of Cr.P.C. However, the facts of this case would suggest that no reasonable ground has been shown to put the clock back to year 2014, when the evidence of concerned witnesses were recorded. It appears that the entire efforts were made to delay the trial and fill up the lacuna, which cannot be the spirit of Section 311 of Cr.P.C. Therefore, I do not find any reason to interfere with the orders passed by the learned Court below.

8. In view of the above, the both the petition *sans merit* and are accordingly dismissed.

Sd/-  
**(Goutam Bhaduri)**  
Judge

Ashok