

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CR.R. No. 337 of 2017

Tovius Xaxa, S/o. Shri V. Xaxa, aged about 38 years, R/o. Mahapalli, P.S. - Chakradhar Nagar, Raigarh, Post- Police Superintendent, P.S. - Station House Officer, P.S. Dhaurpur, District – Sarguja (C.G.)

----Applicant

Versus

State Of Chhattisgarh, Through : Police Centre – Anti Corruption Bureau, Dhaurpur, District – Sarguja (C.G.).

---- Respondent

For Applicant : Mr. Vinod Tekam, Advocate

For State/Respondent : Mr. Suryakant Mishra, Panel Lawyer

Hon'ble Shri Justice Goutam Bhaduri

Order On Board

30/03/2017

1. Challenge in this petition is to the order dated 15.02.2017, passed in Criminal Case No.03/2014, passed by Special Judge (Prevention of Corruption Act), Ambikapur, District – Sarguja (C.G.), whereby an application filed by the applicant under Section 311 of Cr.P.C. to re-examine the witness Chandrajit Yadav (P.W.-3) is rejected.
2. The application under Section 311 of Cr.P.C. filed on 13.12.2016 is perused, wherein it is stated that counsel for the applicant could not cross-examine the witnesses in detail, consequently, there has been failure of justice, therefore, the applicant/accused may be given a proper opportunity to re-examine the witness by recalling him. It is also stated in that application that the said fact came to the notice after the change of counsel was affected and on the advise of

the second counsel, the said application is moved.

3. The order dated 15.02.2017 and the application filed under Section 311 of Cr.P.C. along with copy of the statement of the witness Chandrajit Yadav (P.W-3) shown to have recorded on 17.07.2015. The examination in chief of the witness was made on the date itself initially cross-examination was started by one advocate Shri Sushil Chaturvedi. However, the cross-examination could not be completed as the request was made by the counsel that senior counsel was absent and prayer was made for adjournment for cross-examination. Consequently the trial Court granted such adjournment. Subsequently, after engagement of another lawyer after three months, the cross-examination again started on 14.10.2015. The deposition shows one counsel Shri N. Siddiqui cross-examined the witness. The cross-examination would show that cross-examination was made in detail. However, again lapse of more than an year an application was filed U/s. 311 of Cr.P.C. to cross-examine the witness again.
4. The Hon'ble Supreme Court in case of **Natasha Singh Vs. CBI (State)**¹ has laid down the power to examine any person as witness. Section 311 of Cr.P.C. confers wide discretion to Court. However, examination has to be essential for arriving at just decision. The power not to be exercised to cause prejudice to either party or as disguise for re-trial. Further, in a case of **Mannan SK & Ors. Vs. State of West Bengal & Anr.**² the Court has laid down in recalling of witness, power under Section 311 of Cr.P.C. is wide, recalling is

1 2013 AIR SCW 3554

2 AIR 2014 SC 2950

whether for filling up of lacuna or for just decision of case depends on facts and circumstances of each case.

5. Taking into the facts and circumstance of the case, which shows that when senior counsel was absent initially on request being made, the Court had adjourned the case for cross-examination. Thereafter, the other counsel appeared and detailed cross-examination was made on 14.10.2015. The applicant remained satisfied with such and in the year 2016, after more than a year, an application under Section 311 of Cr.P.C. was moved. Taking into such fact, the nature of cross-examination apparently it shows no prima-facie mistake appears on face of it, which would prejudice the accused. It appears the application is moved to recall the witnesses by taking a chance. Considering the facts, this Court is of the opinion that it is not a case, where the power of revision can be invoked so as to allow the application under Section 311 of Cr.P.C. as no illegality or perversity appears to have been committed by the Court below.
6. In a result, the petition has no merit and is dismissed at admission stage itself.

Sd/-
(Goutam Bhaduri)
Judge