

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Cr.M.P. No.693 of 2017**

Mathura Prasad Kaushik, aged about 50 years, S/o Shri Tirath Ram Ram, R/o Village Umariya, Police Station & Tahsil Takhatpur, District Bilaspur (CG). **---- Petitioner**

Versus

State of Chhattisgarh, through District Magistrate Bilaspur, Tahsil Civil and Revenue District Bilaspur (CG).

--- Respondent

For Petitioner : Mr. Ratnesh Kumar Agrawal, Advocate
For State : Mr. Prasun Bhaduri, Govt. Advocate

Hon'ble Shri Justice Sanjay K. Agrawal
Order On Board

20/06/2017

(1) During the course of the trial, Bisahu Ram was examined as prosecution witness No.3 and he was cross-examined on behalf of the accused through his counsel on 19.01.2017. Thereafter, on 06.04.2017 the petitioner moved an application under Section 311 of CrPC for re-calling the said witness. That application has been rejected by the trial Court vide impugned order dated 04.05.2017 holding that the said witness has been brought for cross-examination on behalf of the accused person, therefore the said application cannot be allowed against which, this petition under Section 482 of CrPC has been filed by the petitioner/accused herein.

(2) Mr. Ratnesh Kumar Agrawal, learned counsel appearing for the petitioner would lie upon the decision of the Supreme Court in the case of **Rajaram Prasad Yadav Vs. State of Bihar & another**¹ and submit that the impugned order is liable to be quashed as the further cross-

¹ (2013) 14 SCC 461

examination of the said witness is absolutely necessary for proper adjudication of the case.

(3) On the other hand, learned counsel appearing for the State/respondent would oppose the prayer and submission made by the learned counsel for the petitioner.

(4) I have heard learned counsel for the parties and perused the impugned order.

(5) The trial Court has clearly recorded a finding that Bisahu Ram (PW-3) has been subjected to cross-examination sufficiently and the others independent witnesses, doctor and Investigating Officer have also been examined and further cross-examination is not necessary. The order passed under Section 311 of CrPC is discretionary in nature as held by the Supreme Court in **Rajaram Prasad Yadav** (supra) discretionary power should be exercised judiciously and not arbitrarily.

(6) After hearing learned counsel for the parties and after going through the impugned order, I am satisfied that the sufficient and valid reasons have been assigned by the trial Court, this Court does not find any such illegality or perversity committed by the Court below which would warrant interference under Section 482 of CrPC.

(7) Consequently, the petition deserves to be and is accordingly dismissed. No order as to cost(s).

SD/-

(Sanjay K. Agrawal)
Judge

L/-