

**HIGH COURT OF CHHATTISGARH, BILASPUR**

**CRMP No. 816 of 2017**

Chandram Sidar S/o Late Shri Vishvanath Sidar Aged About 36 Years R/o Bazar Para Near Chandidai Mandir, Chandipara Pamgarh Police Station Pamgarh District Janjgir Champa Chhattisgarh.

**---- Petitioner**

**Versus**

Bhuwan Lal Kashyap S/o Late Ganesh Ram Aged About 55 Years R/o Jawalpur Baloda Tahsil & Police Station Baloda District Janjgir Champa Chhattisgarh.

**---- Respondent**

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For petitioner- Ms. Deepali Pandey, Advocate.

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**Hon'ble Shri Justice Goutam Bhaduri**

**Order**

**27/10/2017**

Heard.

1. Instant petition is against the order dated 2/05/2017 passed in Criminal Revision No.64/2017 by the Sessions Judge, Session Division, Bilaspur wherein an application filed by the petitioner under section 311 of Cr.P.C. for calling Branch Manager, Dena Bank Bilaspur and Station House Officer, Pamgarh has been refused.
2. As per the case of the petitioner a cheque book bearing No.391781 to 391790 was missing and out of such missing cheque book, one cheque bearing No.391783 was fraudulently used by the respondent. It was alleged before such use by the respondent the report was already made to the Bank & Police and subsequent to it the cheque was bounced from the bank for insufficiency of the fund.
3. It is contended by learned counsel for the petitioner that in order to prove that an application was filed before the court so as to call Branch Manager, Dena Bank Bilaspur and Station House Officer, Pamgarh,

however same was rejected without any reasoning thereof. It is contended that the cheque which was used has been dishonoured for want of fund which was used by the respondent. Prior to that report was made to the Police Station for missing of the cheque as also report was made to the bank. Consequently, it would be necessary to place on record facts which are existing in this case so that the petitioner can put forth his defence to take out the truth. It is further contended that likewise three similar cases were pending and in one of Cr.M.P. No.768/2017 coordinate bench of this court on 12/10/2017 has allowed the application under Section 311 of Cr.P.C. whereby similar witnesses have been allowed to be recalled and no prejudice would be caused to the respondent on the contrary the truth will come to fore.

4. Perused the order dated 12/10/2017 in Cr.M.P. No.768 of 2017 wherein coordinate bench of this court has ordered for calling of the respective witness pursuant to the application filed under section 311 of Cr.P.C. Said petition was also filed by the present petitioner Chandram Sidar.

5. Hon'ble the Supreme Court in a case law reported in **2013 AIR SC Weekly 4179** between **Raja Ram Prasad Yadav Vs. State of Bihar** 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. Taking into facts of this case when the petitioner/accused herein has made prayer to examine the witness i.e. Branch Manager, Dena Bank Bilaspur and Station House Officer, Pamgarh wherein it is stated that earlier report was lodged prior to lodging of the cheques with the bank by the complainant which would certainly have bearing to the issue in hand. If such evidence are not placed before the court entire burden would shift on the accused and if evidence are placed on record then facts may be otherwise which may be in the interest of justice. In the facts of this case no right of the respondent would be prejudiced if chance is given to adduce evidence.

7. Consequently, the petition is allowed and the order dated 2/05/2017 passed in Criminal Revision No.64/2017 by the Sessions Judge, Session Division, Bilaspur is set aside. Application filed under Section 311 of Cr.P.C. is allowed. Respective witnesses are allowed to be called in evidence who have been enlisted to be called under section 311 of Cr.P.C.

Sd/-

(Goutam Bhaduri)

JUDGE