

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRMP No. 548 of 2018**

1. Melaram S/o Tiharuram Sahu Aged About 35 Years R/o- Loharsi, P.S.- Shivrinarayan, District- Janjgir-Champa, Chhattisgarh
 2. Seetaram S/o Niranjan Sahu Aged About 32 Years
 3. Yadram S/o Niranjan Sahu Aged About 34 Years
- Both are resident of village Amoda, P.S. Nawagarh,
4. Daniram S/o Niranjan Sahu, R/o- Village Amoda, P.S. Nawagarh, District- Janjgir-Champa, Chhattisgarh

---- Petitioners

Versus

- State of Chhattisgarh Through- Police Station Nawagarh, District- Janjgir-Champa, Chhattisgarh

---- Respondent

For Petitioners	:	Shri Ashutosh Shukla, Advocate
For Respondent-State	:	Shri S.K. Mishra, PL for the State

Hon'ble Shri Justice Goutam Bhaduri**Order On Board****20/03/2018**

1. Heard.
2. The present petition is against the order dated 05.02.2018, whereby an application filed by the petitioners/accused under Section 311 Cr.P.C. was dismissed on the ground that no reasons exist to allow the witness to be cross-examined by the senior Advocate coupled with the fact that the witnesses have not deposed anything on merits.
3. Learned counsel for the petitioners would submit that two witnesses were

examined on 14.12.2017 & 15.12.2017 and on that date the senior counsel of the accused could not appear and the witnesses were cross-examined by the junior and the statement of one of the witness would show that contradictory averments were made, which needs to be clarified as otherwise in absence of that the petitioner may suffer irreparable loss and the said defect could not be justified and corrected subsequently.

4. Perused the order. The order reflects that an application under Section 311 Cr.P.C. was moved on the ground that on 14.12.2017 & 15.12.2017 two witnesses namely Laxmi Prasad Tiwari and Ramesh Yadav were examined but since the senior advocate could not appear, as such they could not be cross-examined and adequate cross-examination was not made, therefore, they may be summoned for re-examination. The Court rejected the said application on the ground that no justification has been shown to re-examine the witnesses on the ground that the senior was not available and further the Court observed that one of the witness namey Ramesh Yadav has turned hostile and one witness Laxmi Prasad Tiwari has only deposed about the map, therefore, cross-examination of the witnesses may not be required on merits.
5. Perused the statements of Laxmi Prasad Tiwari (PW-1) and Ramesh Yadav (PW-2). Laxmi Prasad Tiwari has only deposed about the map and Ramesh Yadav though he has been declared hostile but it appears that certain contradictory statements have been made. Further taking into the stage of the trial it is felt that it would be the duty of the Court to determine the truth and render the just decision and the statement on record would show that it is not a case that Court cannot pass a judgment without cross-examine of the witness but statement would show that it may result into failure of justice without cross-examination of such witness.

6. In a result, the application under section 311 Cr.P.C is allowed and in order to advance the cause of justice on merits one opportunity is granted to re-examine the witness i.e. Ramesh Yadav (PW-2) to the accused. In the circumstances. The order dated 05.02.2018 is modified to the extent that Ramesh Yadav (PW-2) is allowed to be cross-examined and shall be recalled as a witness in the case as no prejudice would be caused to the prosecution even if such application is allowed.
7. With such observation, the petition stands allowed.

Sd/-
Goutam Bhaduri
Judge

Ashu