

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Revision No.933 of 2017

Birendra Singh @ Ruby Singh, S/o Late Om Prakash Singh Tomar, R/o Pujari Nagar, Tikrapara, Raipur, Chhattisgarh

---- Applicant

versus

State of Chhattisgarh through the District Magistrate, Raipur, Chhattisgarh

--- Respondent

For Applicant	:	Dr. N.K. Shukla, Senior Advocate with Shri N. Naha Roy, Advocate
For State/Respondent	:	Shri Sameer Behar, Panel Lawyer

Hon'ble Shri Justice Arvind Singh Chandel

Order on Board

5.2.2018

1. This revision has been preferred against the order dated 18.9.2017 passed by 3rd Additional Judge to 1st Additional Sessions Judge, Raipur in Sessions Trial No.293 of 2013 rejecting the application preferred by the Applicant/accused under Section 311 of the Code of Criminal Procedure (henceforth 'CrPC').
2. Facts of the case, in short, are that a criminal trial under Section 302 of the Indian Penal Code (henceforth 'IPC') is pending before the Trial Court against the present Applicant/accused. During trial, the Applicant preferred an application under Section 311 CrPC and thereby sought for examination/re-examination of Dr. G.S. Gourhari Kamila, Assistant Director, Hyderabad (Ballistic Expert) and other 3 witnesses, namely, Dr. S.K. Bagh, Nasir Bathi and Ashok Sharma. The said application was rejected on the ground that Nasir Bathi, Dr. S.K. Bagh and Ashok Sharma have already been cross-examined in detail by the Applicant and thus the Applicant has been afforded a sufficient opportunity to make cross-examination of

the aforesaid 3 witnesses. Regarding the ballistic expert, the application was rejected on the ground that while being supplied a copy of the report of the ballistic expert on 30.8.2017 to the Counsel for the Applicant, the Applicant was also present there and the Counsel for the Applicant had submitted that he did not want to call the ballistic expert for examination.

3. Learned Senior Counsel appearing for the Applicant submitted that on 30.8.2017 itself, when the matter was listed for final hearing, a copy of the report of the ballistic expert was supplied to the Counsel for the Applicant in the Trial Court and, therefore, the Counsel for the Applicant could not have sufficient time or occasion to assess as to whether examination of ballistic expert was necessary or not. Learned Senior Counsel further argued that despite there being clear and firm statement of the Counsel for the Applicant that he had not consulted with the Applicant regarding requirement of examination of the ballistic expert, passing of the impugned order by the Trial Court is arbitrary and contrary to the mandate of Section 311 CrPC.
4. Per contra, Learned Counsel appearing for the State, supporting the impugned order, submitted that sufficient and proper opportunity was afforded to the Applicant and, therefore, his application under Section 311 CrPC has rightly been rejected by the Trial Court.
5. I have heard Learned Counsel appearing for the parties and perused the material available with due care.
6. Order-sheet of the Trial Court dated 30.8.2017 reflects that the case was listed for final arguments and on that date the Trial Court

observed that FSL report and Ballistic Expert's report were not marked as exhibits and copies thereof were also not supplied to the Counsel for the Applicant. The order-sheet also reflects that later on, same day, the Trial Court got those documents exhibited and ordered to supply copies thereof to the Counsel for the Applicant. Thereafter, both the parties made a submission before the Trial Court that no witness relating to those documents was required to be called for examination.

7. From the material available, it appears that first time, at the stage of final arguments on 30.8.2017, copies of FSL report and Ballistic Expert's report were ordered to be supplied to the Counsel for the Applicant. Affidavit of Shri Ashish Soni, Counsel for the Applicant is also filed along with the application under Section 311 CrPC before the Trial Court mentioning that prior to making submission of not calling the ballistic expert for examination before the Trial Court he had not made any consultation with the Applicant.
8. Taking into consideration the facts and circumstances of the case and the gravity of the offence alleged against the Applicant, I am of the opinion that in the interest of justice one opportunity must be afforded to the Applicant as sought by him in his application under Section 311 CrPC.
9. Consequently, the revision is allowed. The application moved by the Applicant under Section 311 CrPC before the Trial Court is also allowed. The impugned order is set aside. The Trial Court is directed to afford an opportunity to the Applicant to examine the ballistic expert Dr. G.S. Gourhari Kamila and further cross-examine Dr. S.K. Bagh in the Trial Court.

- 10.** A copy of this order be sent to the Trial Court forthwith for information and necessary compliance.

Sd/-
(Arvind Singh Chandel)
Judge