

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRMP No. 1156 of 2018**

- Chandram Sidar S/o Late Shri Vishvanath Sidar Aged About 42 Years R/o- Bazar Para Near Chandidai Mandir, Chandipara Pamgarh P.S. Pamgarh, District- Janjgir-Champa, Chhattisgarh

---- Petitioner

Versus

- Sanat Kumar Kashyap S/o Mohit Kumar Kashyap, Aged about 44 years, R/o- Village Vyasnagar Post- Baiso, Tahsil And P.S.- Baloda, District- Janjgir-Champa, Chhattisgarh

---- Respondent

For Petitioner : Ms. Deepali Pandey, Advocate

Hon'ble Shri Justice Goutam Bhaduri**Order On Board****11/07/2018**

1. Heard.
2. The present petition is against the order dated 08.06.2018, whereby an application under Section 315 CRPC has been dismissed by the Court below on the ground that one witness i.e. the Police Officer has already been examined as a defense witness.
3. Learned counsel for the petitioner submits that the petitioner is facing a trial under Section 138 of the Negotiable Instruments Act, 1881 wherein this Court on the earlier occasion in CRMP No.768 of 2017 by order dated 12.10.2017 has allowed the application under Section 311 of the Cr.P.C. and allowed the petitioner to produce the document and call any one of the witness, either the Bank Manager or the Police Officer for recording of

statement in defense. It is stated that thereafter the Police Officer was examined in respect of the complaint of missing of the cheque, however, the police officer could not depose the fact as he was not present on the date, therefore, the report so made cannot be exhibited and the accused/petitioner is left with only one option to exhibit the same by examining himself, which is vested under Section 315 Cr.P.C.

4. Perused the documents filed along with the petition as also the copy of the earlier order passed in CRMP No.768 of 2017 on 12.10.2017, wherein this Court has allowed the application under Section 311 Cr.P.C. and has allowed the petitioner to produce the document and call any one of the witness and pursuant to that one police officer was examined. The statement of the Police Officer namely Harishchandra Tandekar as defense witness is perused, wherein he has stated that if the receipt has been given by another officer for the complaint made, he is not aware to depose the same. Under the circumstances an application was filed by the petitioner under Section 315 Cr.P.C. to get himself examined. Section 315 Cr.P.C. contemplates that if any person accused of an offence before a Criminal Court shall be a competent witness for the defence and may give evidence on oath in disproof of the charges made against him and he should be called as a witness when the request is made by him only in writing.
5. in this case as has been stated that the petitioner relies upon the report made about the missing of the cheque and that report petitioner wants to exhibit. Section 315 Cr.P.C. gives a power to a accused to get himself examined as a witness before the Court. Application in this case has been moved by the petitioner/accused to get himself examined, therefore, it suffice the requirement under Section 315 Cr.P.C. Furthermore, in the facts of this case, after perusal of the documents, this Court also feels that one

opportunity should be granted to the petitioner/accused so that the natural justice can be adhered to. Perusal of the document which prima facie shows that one opportunity may be given to the petitioner as otherwise he will not be able to prove his defense. Accordingly, the order dated 08.06.2018 is set aside. The application under Section 315 Cr.P.C. is allowed. The petitioner is allowed to be examined as a witness in the Court below.

6. With such observation, the petition stands disposed of.

Sd/-

Goutam Bhaduri
Judge

Ashu