

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CR.R. No. 702 of 2018

Smt. Rekha Agrawal, W/o. Shri Sunil Agrawal, Aged About 60 Years, R/o. Qtr. No. 45, 46, Motilal Nehru Nagar, Bhilai, Tahsil and District- Durg, Chhattisgarh.

---- Applicant

Versus

Anil Agrawal, S/o. Late L.N. Agrawal, Aged About 69 Years, R/o. 601, Sangeet Sarita Apartment, Jhulabai Road, Mumbai (Maharashtra).

-----Respondent

For Applicant	: Mr. B.P. Sharma, Advocate with Mr. Raza Ali, Advocate
For Respondent	: Mr. Jaydeep Singh Yadav, Advocate

Hon'ble Shri Justice Rajendra Chandra Singh Samant
Order On Board

03/12/2019

1. This revision petition has been brought being aggrieved by the order of the First Additional Judge to the Court of First Additional Sessions Judge, Durg in Criminal Revision No.72/2018 decided on 13.06.2018 by setting aside the order of the trial Court dated 16.04.2018, passed in Complaint Case No.1536 of 2018.
2. The applicant/complainant is prosecuting the case against the accused/respondent. Application was filed by the applicant under Section 311 of Cr.P.C. praying for examination of necessary witnesses. The Court of learned Magistrate allowed the application

and permitted the examination of additional witnesses. The learned revisional Court has in the impugned order held that the application has been filed belatedly for the purpose of lingering on the complaint case and this is the only ground on which the revision has been decided and the order of Judicial Magistrate First Class, Durg has been set-aside.

3. It is submitted by the learned counsel for the applicant that the impugned order is arbitrary, erroneous and against the principles of law. The learned trial Court has rightly appreciated and passed the order allowing the application. It is submitted that in case of **Sethuraman Vs. Rajamanickam**, reported in **(2009) 5 SCC 153**, it was held by the Supreme Court that the application under Section 311 of Cr.P.C. are of interlocutory nature, therefore, no revision can lie. Relying on the judgment of Supreme Court in case of **Mary Pappa Jebamani Vs. Ganesan & Others**, reported in **(2014) 14 SCC 477**, it is submitted that if there is any extra ordinary circumstances in that case even retrial can be ordered. Further relied on the judgment of Supreme Court in case of **Manju Devi Vs. State of Rajasthan & Anr.**, reported in **(2019) 6 SCC 203**, it is submitted that the Court should exercise discretionary powers under Section 311 of Cr.P.C. to ensure that no prejudice is caused to any party and also that the length of pendency of case should not come in the way of examining the material witnesses. Hence, prayed that the revision be allowed.
4. Counsel for the respondents opposes the petition and the submission made in this respect. It is submitted that no error has

been committed by revisional Court. It is submitted that one witness Shashi Goyal, who is proposed to be examined as witness was earlier arrayed as an accused in the complaint case, who is now being cited to be examined as a witness in the complaint case. Placing reliance on the judgment of Supreme Court in case of ***Rajaram Prasad Yadav Vs. State of Bihar & Anr.***, reported in ***(2013) 14 SCC 461***, it is submitted that revision be dismissed.

5. I have heard the learned counsel for the parties and perused the documents placed on record.
6. On perusal of the impugned order and the order passed by the trial Court, it is found that the learned revisional Court has set-aside the order of the trial Court only on this basis, that application under Section 311 of Cr.P.C. was filed at the stage of final arguments and allowing such applications was not appropriate at this stage.
7. While examining the revisional jurisdiction, revisional Court has to consider the correctness, legality and propriety of the order passed by the trial Court. The impugned order does not reflect such observations, if any, made regarding the legality, propriety and correctness of the order.
8. Section 311 of Cr.P.C. very clearly provided that the Court has power to summon material witness, or examine person present in the Court. The learned Sessions Judge while exercising the jurisdiction should have examined accordingly whether the witnesses proposed to be examined are material or not and in that direction the finding should have been regarding legality, propriety

and correctness of the order. Therefore, it is found that the revisional Court has not correctly decided the revision. Hence, this petition is disposed off at motion stage. The impugned order is set-aside. The revision petition before the learned Sessions Court is restored to its file and it is also directed to reconsider and decide the revision petition in accordance with the law.

Sd/-
(Rajendra Chandra Singh Samant)
Judge

Balram