

HIGH COURT OF CHHATTISGARH, BILASPUR**Order Reserved On 25.09.2019****Order Delivered On 20.12.2019****CRR No. 890 of 2019**

- Ram Narayan S/o Late Ram Prasad, aged about 35 years, R/o Tengani, Police Station & Post Patna, Tahsil Baikunthpur, District Korea Chhattisgarh.

---- Applicant**Versus**

- Smt. Sanju Devi W/o Ram Narayan D/o Hari Prasad, aged about 34 years, R/o Village Temari Police Station & Post Patna, Tahsil Baikunthpur, District Korea Chhattisgarh.

---- Respondent

For Applicant	:	Mr. R. K. Pali, Adv.
For Respondent	:	Mr. Vijay Kumar Sahu, Adv.

Hon'ble Smt. Justice Rajani Dubey**C.A.V. Order****20.12.2019**

1. Heard on admission.
2. With the consent of both the parties, revision is heard finally.
3. The present revision petition has been filed by the applicant against the order dated 13.06.2019 passed by Additional Sessions Judge (FTC) Baikunthpur, Koriya, in Criminal Appeal No. 44/2019, affirming the judgment and order dated 12.04.2019 passed by learned Judicial Magistrate First Class, Baikunthpur Koriya, whereby the application u/s 311 of Cr.P.C. filed by applicant has been dismissed.
4. Before trial Court, applicant is facing trial under Domestic Violence Act and, during trial applicant (husband) had filed application under Section 311 (2) of Cr.P.C. seeking recalling of witnesses for further cross-examination but learned Judicial

Magistrate under the impugned order dated 12.04.2019 dismissed the application. Hence, this revision.

5. Learned counsel for the applicant submits that learned Courts below have committed grave illegality by rejecting the application u/s 311 of Cr.P.C. Earlier, the applicant has filed an application dated 21.11.2017 for recalling the witnesses of Doctor and A.S.I. Sunil Singh with document i.e. Rojnamcha Sanha of the complainant but the application has been rejected therefore, the applicant wants to exhibit the documents before the Court below to prove his case but the Courts below have wrongly closed the right of the applicant. He further submits that these documents are necessary for proper adjudication of the case. The entire complaint filed by the respondent is on false grounds, therefore, the recalling of witnesses are necessary for re-examination. The impugned judgment suffers from factual and legal infirmity and as such the same is liable to be set-aside. In support of his argument learned counsel for the applicant place reliance on the decision of Supreme Court in the matter of **Natasha Singh v. CBI** reported in [**2013 AIR (SCW) 3554**] & **Abhijit Bhikaseth Auti v. State of Maharashtra and Anr.** reported in [**2008 SCC Online Bom 1388**]

6. On the other hand, learned State counsel supported the impugned order passed by the Court below and placed reliance on the decision of Supreme Court in the matter of **Rajaram Prasad Yadav v. State of Bihar & Anr.** reported in [**(2013) 14 SCC 461**]

7. Heard learned counsel for both the parties and perused the material available on record.

8. Be that as it may, it is clear from order-sheet that this application was filed on the very earlier stage, and no reason for such omission has been assigned.

9. Section 311 of Cr.P.C. provided as under:-

“311....Power to summon material witness, or examine person present. - Any Court may, at any

stage of any inquiry, trial or other proceeding under this Code, summon any person as a witness, or examine any person in attendance, though not summoned as a witness, or recall and re-examine any person already examined; and the Court shall summon and examine or recall and re-examine any such person if his evidence appears to it to be essential to the just decision of the case."

10. Hon'ble Apex Court in the case of Rajaram (supra) held in para 14 as under:-

" The power vested under the said provision is made available to any Court at any stage in any inquiry or trial or other proceeding initiated under the Code for the purpose of summoning any person as a witness or for examining any person in attendance, even though not summoned as witness or to recall or re-examine any person already examined. Insofar as recalling and re-examination of any person already examined, the Court must necessarily consider and ensure that such recall and re-examination of any person, appears in the view of the Court to be essential for the just decision of the case. Therefore, the paramount requirement is just decision and for that purpose the essentiality of a person to be recalled and re-examined has to be ascertained. To put it differently, while such a widest power is invested with the Court, it is needless to state that exercise of such power should be made judicially and also with extreme care and caution."

11. Learned trial Court as well as the Appellate Court while passing the impugned order have rightly considered the factual aspect of the matter. This Court does not find any illegality or infirmity in the order impugned warranting any interference by this Court.

12. For the foregoing reasons, and in the light of Supreme Court's order in the matter of Rajaram (Supra), the Criminal Revision passed by the applicant is liable to be and the same is hereby dismissed.

**Sd/-
(Rajani Dubey)
JUDGE**

Vijay Sahu