

HIGH COURT OF CHHATTISGARH, BILASPUR

WP227 No. 45 of 2021

- Harsh Gill, S/o Sukhpal Singh Gill, Aged About 20 Years, R/o House No. B-21 Sector 2 Devendra Nagar, District - Raipur Chhattisgarh.

---- Petitioner

Versus

1. State of Chhattisgarh, Through District Magistrate Raipur, District Raipur Chhattisgarh.
2. Sunil Kumar, S/o Kishan Kumar Vimaar, Aged About 18 Years R/o Jagannath Nagar Pandri, Police Station - Civil Lines, Raipur Chhattisgarh.
3. Milap Kumar, S/o Mohan Lal Yadav, Aged About 23 Years, R/o Ninka, Police Station - Dharsiva, Raipur Chhattisgarh.
4. Bittu Gill, S/o Avtar Singh, Aged About 53 Years, R/o Devendra Nagar, B/21 Sector 2 Raipur Chhattisgarh.

---- Respondents

For Petitioner : Mr. Chetan Singh Chauhan & Mr. Ashish Surana, Advocates.
For Respondents/State : Mr. B.P. Banjare, Dy. Govt. Advocate.

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

22/02/2021

Heard.

1. This petition has been brought being aggrieved by the order dated 03.03.2020 (Annexure P/1) passed by the Court of learned Additional Sessions Judge, Raipur, Chhattisgarh, rejecting the application filed by petitioner under Section 311 of CrPC.
2. It is submitted by the counsel for petitioner, that the Investigating Officer Mr. R.S. Sahu has been examined as PW-7 and Dr. Devendra Nayak has been examined as PW-3 in the trial. Some of the material witnesses have been examined after the examination of the Investigating Officer and as there are material contradictions and omissions pointed out in their statements,

therefore, there is requirement to put questions to the Investigating Officer in that regard. Similarly, Dr. Devendra Nayak (PW-3) has made statement about the bed-head ticket for which sufficient questions were not put to him in cross-examination to get clarified status of the bed-head ticket, hence, this witness is also required to be re-cross-examined by the applicant side. Application under Section 311 CrPC has been erroneously and arbitrarily rejected by the trial Court, hence, it is prayed that this petition be allowed and petitioner be granted relief as prayed for.

3. Learned State counsel opposes the petition and submissions made in this respect. It is submitted that the petitioner, who is an accused in the Sessions Trial, has been given full opportunity to cross-examine these witnesses, therefore, the learned trial Court has not committed any error in rejecting the application filed under Section 311 CrPC. Hence, this petition may also be dismissed.
4. I have heard both the parties and perused the documents on record.
5. Considered on the submissions. Perused the application filed under Section 311 CrPC and copies of deposition sheets of the Investigating Officer Mr. R.S. Sahu (PW-7) and Dr. Devendra Nayak (PW-3). On perusal of the same, I am of this view that the petitioner had full opportunity to examine Dr. Devendra Nayak (PW-3), however, this fact cannot be ignored that some of the material witnesses, who are the witnesses of the spot, have been examined after examination of the Investigating Officer, therefore, the discrepancies that have been pointed out in their statements, which may be contradiction or omission or otherwise a development of the same, are needed to be clarified by the Investigating Officer. Hence, re-cross examination of Mr. R.S. Sahu (PW-7) may have been permitted by the trial Court and by not doing so the trial Court committed an error. Hence, the petition deserves to be allowed at the motion stage itself.
6. Accordingly, the petition is allowed in part. The impugned order so far it relates to denial of prayer to re-examine Mr. R.S. Sahu (PW-7) is hereby set aside and application of the petitioner filed under Section 311 CrPC is allowed to the extent that he shall be permitted to re-cross

examine Mr. R.S. Sahu (PW-7), the Investigating Officer. The trial Court is directed to grant such opportunity for re-cross examination to the petitioner in the trial and proceed with the same in accordance with law.

Sd/-

(Rajendra Chandra Singh Samant)

Judge

Nisha