

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Revision No. 291 of 2019**

Samar Shekhar Singh, son of Shashi Shekhar Singh, aged about 28 years, resident of Village-Kurmadil, Police Station-Shambhuganj, District Banka (Bihar)

---- Applicant

Versus

State of Chhattisgarh, through the Station House Officer, Police Station-Amabeda, District – North Bastar, Kanker (C.G.)

----Respondent.

For Applicant	:	Mr. D.N. Prajapati, Advocate
For Respondent/State	:	Mr. Devesh Chand Verma, Govt. Advocate.

Hon'ble Shri Justice N.K. Chandravanshi**Order On Board**

12.08.2021

(1) Proceedings of the matter have been taken-up through Video Conferencing.

(2) This criminal revision has been preferred against the order dated 13.2.2019 passed by Additional Sessions Judge (FTC), Uttar Bastar, Kanker in Sessions Trial No. 18/2017, whereby an application filed by the applicant-accused under Section 311 of the Code of Criminal Procedure, 1973 (henceforth 'the Code') for recalling of the witnesses has been rejected by the trial Court.

(3) Facts of the case in brief is that applicant/accused is being prosecuted for an offence punishable under Section 302 of the IPC and Section 27 of the Arms Act in Sessions Trial No. 18/2017 [State of Chhattisgarh v. Samar Shekhar Singh] before the Additional Sessions Judge (FTC), Uttar Bastar, Kanker. After closing the case for judgment, applicant/accused filed an application under Section 311 of

the Code for recalling of the witnesses namely Vinod Netam (PW-10), Investigating Officer – Jeevan Kumar Jangde (PW-13), Constable Ajay Kumar (PW-16) & Ignasiyush Tirky (PW-3) stating therein that question regarding presence of finger print and taking of finger print from seized S.L.R. butt No. 413/14 B.N. and body number Rifle 7.62 M.M. 1A B.K.4718 has not been asked in the cross-examination, therefore, aforesaid witnesses may be recalled and opportunity be afforded to cross-examine pertaining to the aforesaid facts.

(4) After hearing learned counsel for the parties, learned trial Court vide impugned order dated 13.02.2019, rejected the said application finding that sufficient opportunity had been afforded to the applicant-accused for cross-examination of the aforesaid witnesses, there is no merit in the application and it has been filed just to delay in disposal of the case.

(5) Learned counsel for the applicant submits that learned trial Court has earlier allowed the application under Section 311 of the Code filed on behalf of the prosecution twice, even for those witnesses, who were not listed witnesses, in the list of witnesses attached with the final report *but* the application under Section 311 of the Code filed by the applicant for recalling of the aforesaid witnesses has been rejected by the trial Court finding no merit, this does not show just & fair trial by the trial Court and it would adversely affect the case of the applicant/accused, therefore, the impugned order is erroneous and not sustainable in law. He further submits that as the aforesaid witnesses were not properly cross-examined in respect of material point / in respect of finger print in the seized rifle, it is necessary to call the aforesaid witnesses for their further cross- examination pertaining to the aforesaid facts, because the same is required for proper adjudication of the case. He placed reliance upon the judgment of the Supreme Court in the matter of **Vijay Kumar v. State of Uttar Pradesh and another**¹ & judgment of High Court of Madhya Pradesh in the matter of **Amit Sachin v. State of M.P.**² in support of his submissions.

(6) On the other hand, learned counsel for the State/respondent would submit

¹ (2011) 8 SCC136

² 2013 (I) MPWN 5

that records of the court below shows that presence of finger print and taking of finger print from alleged rifle has not been taken during investigation and further, full / sufficient opportunity for cross-examination of the aforesaid witnesses was afforded to the defence counsel and, therefore, learned trial Court has not committed any error in dismissing the application under Section 311 of the Code for recalling of the aforesaid witnesses.

(7) I have heard learned counsel appearing for the parties and perused the impugned order with utmost circumspection.

(8) Learned counsel for the applicant has filed copy of application under Section 311 of the Code, which he had filed earlier, before the trial Court, with the instant revision petition. He has also filed copy of the impugned order and copy of court statements of aforesaid four witnesses and other relevant documents with this revision petition.

(9) Perusal of the impugned order and application under Section 311 of the Code filed by the applicant shows that he wants to recall the witnesses namely Vinod Netam (PW-10), Investigating Officer – Jeevan Kumar Jangde (PW-13), Constable Ajay Kumar (PW-16) & Ignasiyush Tirky (PW-3) for their further cross-examination with regard to the fact that as to whether finger print was present and finger print was taken from alleged seized rifle butt or not and whether finger print of applicant/accused and Ajay Kumar (PW-16) [to whom the alleged rifle was allotted] was taken or not but the trial Court after due consideration specifically observed that in this case no action was taken with regard to presence of finger print or collection of finger print from the said rifle.

(10) Ignasiyush Tirky (PW-3) has been questioned by learned defence counsel at the time of cross-examination regarding collection of finger print (in paragraph 12). Ajay Kumar (PW-16) [to whom the alleged rifle was allotted] has also been examined regarding collection of his finger print (in paragraph 3) of his cross-examination. Therefore, it cannot be said that the witnesses have not been examined regarding collection of finger print from the rifle. Not only this, as per impugned order, if no investigation has been done regarding presence of finger

print or collection of finger print from the said rifle, then, there is no ground for asking questions again from the said witnesses regarding collection of finger print because when the action of taking finger print from the said rifle has not been done, then the question of recalling of the aforesaid witnesses for their further cross-examination for said purpose have no relevance.

(11) In the matter of **Vijay Kumar v. State of Uttar Pradesh** reported in **(2011) 8 SCC 136**, their Lordships of the Supreme Court while considering the provisions contained in Section 311 of the Code, has observed as under :-

“14. There is no manner of doubt that the power under [Section 311](#) of Code of Criminal Procedure is a vast one. This power can be exercised at any stage of the trial. Such a power should be exercised provided the evidence which may be tendered by a witness is germane to the issue involved, or if proper evidence is not adduced or relevant material is not brought on record due to any inadvertence. It hardly needs to be emphasized that power under [Section 311](#) should be exercised for the just decision of the case. The wide discretion conferred on the court to summon a witness must be exercised judicially, as wider the power, the greater is the necessity for application of the judicial mind. Whether to exercise the power or not would largely depend upon the facts and circumstances of each case. As is provided in the Section, power to summon any person as a witness can be exercised if the court forms an opinion that the examination of such a witness is essential for just decision of the case.

15. xxx xxx xxx
16. xxx xxx xxx

17. Though [Section 311](#) confers vast discretion upon the court and is expressed in the widest possible terms, the discretionary power under the said Section can be invoked only for the ends of justice. Discretionary power should be exercised consistently with the provisions [of the Code](#) and the principles of criminal law. The discretionary power conferred under [Section 311](#) has to be exercised judicially for reasons stated by the Court and not arbitrarily or capriciously. Before directing the learned Special Judge to examine Smt. Ruchi Saxena as a court witness, the High Court did not examine the reasons assigned by the learned Special Judge as to why it was not necessary to examine her as a court witness and has given the impugned direction without assigning any reason.”

(12) In the matter of **Natasha Singh v. Central Bureau of Investigation (State)**, reported in **(2013) 5 SCC 74**, their Lordships of the Supreme Court while considering the scope and object of provisions contained in Section 311 of the Code and considering its various judgments rendered earlier, has held as under :-

“15. The scope and object of the provision is to enable the Court to determine the truth and to render a just decision after discovering all relevant facts and obtaining proper proof of such facts, to arrive at a just decision of the case. Power must be exercised judiciously and not capriciously or arbitrarily, as any improper or capricious exercise of such power may lead to undesirable results. An application under [Section 311](#) Cr.P.C. must not be allowed only to fill up a lacuna in the case of the prosecution, or of the defence, or to the disadvantage of the accused, or to cause serious prejudice to the defence of the accused, or to give an unfair advantage to the opposite party. Further, the additional evidence must not be received as a disguise for retrial, or to change the nature of the case against either of the parties. Such a power must be exercised, provided that the evidence that is likely to be tendered by a witness, is germane to the issue involved. An opportunity of rebuttal however, must be given to the other party. The power conferred under [Section 311](#) Cr.P.C. must therefore, be invoked by the Court only in order to meet the ends of justice, for strong and valid reasons, and the same must be exercised with great caution and circumspection. The very use of words such as ‘any Court’, ‘at any stage’, or ‘or any enquiry, trial or other proceedings’, ‘any person’ and ‘any such person’ clearly spells out that the provisions of this section have been expressed in the widest possible terms, and do not limit the discretion of the Court in any way. There is thus no escape if the fresh evidence to be obtained is essential to the just decision of the case. The determinative factor should therefore be, whether the summoning/recalling of the said witness is in fact, essential to the just decision of the case.”

(13) In the instant case, although during trial, application under Section 311 of the Code filed by the prosecution was allowed twice but only this ground does not confer any right to the applicant to allow his application as Hon'ble Supreme Court in Vijay Kumar (supra) & Natasha Singh (supra) has held that "power to summon any person as a witness can be exercised if the Court forms an opinion that examination of such witness is essential for just and proper decision of the case". In the instant case, learned trial Court after due consideration did not find that recalling of the aforesaid witnesses is essential for just decision of the case. It is also pertinent to mention here that applicant was afforded full / sufficient opportunity to cross-examine the aforesaid witnesses, in which, some of them have been cross-examined regarding collection of their finger prints, which they have denied.

(14) Thus, in view of the aforesaid legal proposition, perusal of the impugned order would show, that learned trial Court after due consideration, found that sufficient opportunity had been afforded for cross-examination of the aforesaid witnesses to the applicant and further held that in this case, no action was taken regarding collection of finger print from the said rifle and, thus, the reasons for which, the aforesaid witnesses have been requested to be recalled for further cross-examination is not just & proper. Thereby, I do not find any substance in this revision because order passed by the trial Court dismissing the application filed by the applicant/accused under Section 311 of the Code is well founded and reasoned order.

(15) In view of foregoing discussion, the criminal revision, being devoid of substance, is liable to be and is hereby dismissed.

Sd/-
(N.K. Chandravanshi)
Judge

D/-

