

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Proceedings through Video Conferencing****Criminal Revision No.539 of 2021**

- Omprakash Verma S/o Shri Santu Verma Aged About 23 Years R/o Village Bahera (Ghivari), Thana And Tahsil Bemetara, Civil And Revenue District Bemetara Chhattisgarh.

---- Applicant**Versus**

- State Of Chhattisgarh Through The District Magistrate Bemetara, District Bemetara Chhattisgarh.

---- Respondent

 For applicant : Shri Samir Singh, Advocate
 For respondent/State : Shri Devesh Verma, Govt. Advocate

Hon'ble Shri Justice N.K. Chandravanshi**Order On Board****27.8.2021.**

1. Heard on admission.
2. This revision petition is preferred against order dated 27.7.2021 passed by First Additional Sessions Judge (FTC), Bemetara Distt. Bemetara in Session Trial No. 36/2020, whereby the trial Court rejected the application filed under Section 311 of the Code of Criminal Procedure, 1973 (for short 'the Code') filed by the applicant/accused for recalling of victim/prosecutrix and her husband for further cross-examination.
3. Learned counsel for the applicant/accused submits that the victim/prosecutrix and her husband were examined in the month of March 2021 during the pandemic period and some relevant questions have not been asked to them regarding previous enmity between the family of the victim/prosecutrix and the accused/applicant and also regarding some

other issues which are necessary to be asked to get the actual facts of the case, but the trial Court without considering the mandate of Section 311 of the Code, dismissed the application which is erroneous and not sustainable.

4. Per contra, learned counsel for the State while opposing the submissions made by learned counsel for the applicant/accused submits that the defence counsel had examined said witnesses at length and at that time, required questions could have been asked to those witnesses. It is not such that again those witnesses are required to be called for further cross-examination, therefore, the learned trial Court has not committed any error in dismissing the application under Section 311 of the Code for recalling the witnesses.

5. I have heard learned counsel for the parties and perused the material available on record including the impugned order.

6. Section 311 of the Code deals with summoning of material witnesses which reads as under:

“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.”

7. Crux of the provision is that if any witness is required to be examined for the just decision of the case, he may be called by the Court under the

said provisions, but power of this provision cannot be invoked for filling the gap or lacking evidence laid by the parties.

8. In the present case, perusal of the impugned order shows that the applicant/accused wants to recall the witnesses for further cross-examination with regard to previous enmity between both the family members and also on the point that since the house of the victim/prosecutrix is adjacent to the houses of others, noise made by anyone in her house can be heard in the adjacent houses. These are such questions which could have been asked during the cross-examination of the victim/prosecutrix, but same have not been asked.

9. As has been stated above, power under Section 311 of the Code cannot be invoked for filling up the gap/lacuna. The trial Court has passed a well reasoned order, I do not find any infirmity or illegality in passing the impugned order warranting interference of this Court.

10. Thus, the revision is dismissed at the motion stage.

Sd/-

(N.K. Chandravanshi)
JUDGE