

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Revision No. 582 of 2021**

1. Imran Ali, S/o Deedar Ali, aged about 38 years, R/o – Police Station – Chhura, District Gariyaband (C.G.)
2. Hamid Ali, S/o Ismile Ali, aged about 58 years, R/o – Behind Maszid, Rajim, Gariyaband Road, Police Station – Rajim, District – Gariyaband (C.G.)

---- Applicants**Versus**

State of Chhattisgarh, through Station House Officer, Police Station – Rajim, District Gariyaband (C.G.)

----Respondent

For Applicants	: Mr. Shivendu Pandya, Advocate.
For Respondent/State	: Mr. Dinesh Tiwari, Dy. Govt. Advocate.

Hon'ble Shri Justice N.K. Chandravanshi**Order On Board****09.09.2021**

Heard on admission.

(1) This criminal revision has been filed against the order dated 01.09.2021 passed by Additional Sessions Judge, Gariaband in Sessions Trial No. 65/2015 pending before him under Section 436, 511, 506 & 34 of the Indian Penal Code (for short “the IPC”) whereby application filed by the applicant under Section 311 of the Code of Criminal Procedure, 1973 (for brevity “the Code”) has been dismissed.

(2) Learned counsel for the applicant would submit that sessions case was committed the Sessions Court on 5.10.2015. After examination of most of

prosecution witnesses, FSL report of seized articles were submitted before the Additional Sessions Judge, Gariyaband, which have been exhibited as Exs. P-18 & P-19 by recalling Investigating Officer S.K. Vishwakarma (PW-8) but Officers / Experts, who had prepared the said FSL report has not been examined by the prosecution agency, therefore, applicants have filed an application under Section 311 of the Code for calling the witnesses namely Dr. R.K. Gupta, Joint Director & Assistant Chemical Examiner, Dr. H.S. Bhawra, Senior Scientist & Assistant Chemical Examiner of CG State Forensic Science Laboratory, Raipur and Constable Mr. Vijendra Yadav for their examination pertaining to FSL report prepared / submitted by them and after their examination, since some new facts would come, therefore, Shrawan Kumar Vishwakarma (PW-8) & S.R. Tandi be recalled for their further cross-examination. He would further argue that FSL report was submitted on 27.11.2019, thereafter, lock-down was going on and the trial Court was not functioning regularly during Covid-19 pandemic situation, as a consequence, applicants could not file application under Section 311 of the Code right in time and when the situation normalized, the applicant filed the said application under Section 311 of the Code. According to him, examination / further examination of aforesaid witnesses are necessary for defence of applicants but learned Court below without properly considering the aforesaid facts of the case, dismissed the application vide impugned order, which is erroneous, arbitrary and unsustainable in law.

(3) Per contra, learned counsel for the State would submit that FSL report was filed before learned trial Court on 27.11.2019 i.e. at the stage of evidence of prosecution witnesses, thereafter, statements of accused persons under Section 313 of the Code were recorded and several opportunities/dates were given to the applicants/accused for recording their defence witnesses and after taking several opportunities to produce defence witnesses, applicant have filed application under Section 311 of the Code just only the delay the hearing and disposal of the trial. He further submits that in view of the provisions contained in Section 293 (1) of the Code, reports of government scientific experts, which has been stated

in sub-Section 4 may be used as evidence, therefore, their statements are not required to be recorded in the Court and learned trial Court has rightly dismissed the application under Section 311 of the Code in view of provisions contained in Section 293 (1) of the Code. Thus, the order impugned is well reasoned order, hence does not call for any interference by this Court.

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

(5) At this stage, it would be appropriate to notice the provisions contained in Section 293 of the Code, which reads thus :-

“293. Reports of certain Government scientific experts.- (1) Any document purporting to be a report under the hand of a Government scientific expert to whom this section applies, upon any matter or thing duly submitted to him for examination or analysis and report in the course of any proceeding under this Code, may be used as evidence in any inquiry, trial or other proceeding under this Code.

(2) The Court may, if it thinks fit, summon and examine any such expert as to the subject-matter of his report.

(3) Where any such expert is summoned by a Court and he is unable to attend personally, he may, unless the Court has expressly directed him to appear personally, depute any responsible officer working with him to attend the Court, if such officer is conversant with the facts of the case and can satisfactorily depose in Court on his behalf.

(4) This section applies to the following Government scientific experts, namely :-

(a) any Chemical Examiner or Assistant Chemical Examiner to Government;

(b) the Chief Controller of Explosives;

- (c) the Director of the Finger Print Bureau;
- (d) The Director, Haffkeine Institute, Bombay;
- (e) The Director [Deputy Director or Assistant Director] of a Central Forensic Science Laboratory or a State Forensic Science Laboratory;
- (f) the Serologist to the Government.
- [(g) any other Government scientific expert specified, by notification, by the Central Government for this purpose.]

(6) In this case, copy of order sheets filed by the applicants with their revision petition shows that FSL Report was filed on 27.11.2019 during course of recording of prosecution witnesses, thereafter, the case was fixed for recording of evidence of prosecution witnesses on 12.12.2019 & 15.01.2020. Thereafter, the case was fixed for recording of evidence of accused persons under Section 313 of the Code on 28.01.2020. After recording of statements of accused persons on 07.02.2020, the case was fixed for recording of defence witnesses on 17.02.2020. Thereafter, more than 8 opportunities/dates were given for recording of defence witness and thereafter the applicants have filed an application under Section 311 of the Code.

(7) Of course, during this period, lockdown was going on but the application under Section 311 of the Code could have been filed by the applicants during the said period but they did not do the same. This fact shows that applicants had filed the said application after an inordinate delay.

(8) Provisions of Section 293 of the Code provides that those government scientific experts report, which have been specified in sub-Section 4 may be used as evidence in any trial or other proceedings under this Code. Therefore, in light of aforesaid legal provisions, recording of their statements in respect of their report, which comes under the purview of said provision is not necessary. Although, as per provision of sub-Section (2), if the Court thinks proper to examine them, they may be called upon for their examination about such report but to invoke this power of the Court, there must be some facts, which satisfy the

Court that as to why recording of their evidence is necessary and their non-examination will defeat the ends of justice but in this case nothing has been stated in this regard that as to why examination of said expert, who have prepared FSL report, is necessary.

(9) Thus, since applicants have not disclosed any such facts, on the basis of which examination of aforesaid experts can be considered appropriate & necessary to meet the ends of justice, therefore, I do not find any infirmity or illegality in the order impugned rejecting the application under Section 311 of the Code filed by the applicants.

(10) As a fallout and consequence of the aforesaid discussion, the criminal revision, being devoid of substance, is liable to be and is hereby dismissed at the admission stage itself.

D/-

Sd/-
(N.K.Chandravanshi)
Judge

