

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Revision No. 780 of 2021**

- Dheeraj Lakra son of Hermon Lakra, Caste-Uraon, aged about 23 years, resident of Village- Bagiya Karanjtoli, Police Chowki- Dokda, P.S.- Kansabel, District- Jahspur (C.G.)

---- Applicant

Versus

- State of Chhattisgarh, through the Station House Officer, Police Station- Kansabel, District Jashpur (C.G.)

---- Respondent

For Applicant	:	Shri J.K. Saxena, Advocate
For Respondent	:	Shri Shrestha Gupta, Panel Lawyer

Hon'ble Shri Justice Gautam Chourdiya, J**Order on Board****09.12.2021**

1. Heard on admission.
2. The present revision petition under Section 397/401 of Cr.P.C. has been filed by the applicant/accused against the order dated 20.10.2021 passed by the Additional Sessions Judge, Additional Charge F.T.C., Jashpur (C.G.) in Special Case No. 29/2020 rejecting the application under Section 311 of Cr.P.C. filed by the applicant.
3. Learned counsel for the applicant/accused submits that the trial Court has committed error of law in rejecting the application under Section 311 of Cr.P.C. filed by the applicant. He further submits that the trial Court has failed to appreciate that the trial is pending since long without any fault on the part of the applicant, therefore, re-examination of the prosecutrix (PW-4), Manisha Kujur (PW-3 - maternal aunty of the prosecutrix) and Nikodin Kujur (PW-8 - maternal uncle of the prosecutrix) will not cause any delay in conclusion of trial. He also submits that the trial Court has failed to appreciate that if the applicant would not be afforded opportunity to re-cross examine PW-4, PW-3 & PW-8, then it would adversely affect the applicant's

defence, as those witnesses have made material statements against the applicant.

4. On the other hand learned counsel for the State has supported the impugned order.
5. Heard learned counsel for the parties and perused the impugned order as well as evidence of PW-3, PW-4 & PW-8.
6. In the matter of ***Mannan Shaikh and Others Vs. State of West Bengal and Another, (2014) 13 SCC 59***, the Hon'ble Supreme Court has observed in Para-12 of its judgment which reads as under:

“12. The aim of every court is to discover truth. Section 311 of the Code is one of many such provisions of the Code which strengthen the arms of a court in its effort to ferret out the truth by procedure sanctioned by law. It is couched in very wide terms. It empowers the court at any stage of any inquiry, trial or other proceedings under the Code to summon any person as a witness or examine any person in attendance, though not summoned as witness or recall and re-examine already examined witness. The second part of the section use the word “*shall*”. It says that the court shall summon and examine or recall or re-examine any such person if his evidence appears to it to be essential to the just decision of the case. The words “*essential to the just decision of the case*” are the keywords. The court must form an opinion that for the just decision of the case recall or re-examination of the witness is necessary. Since the power is wide its exercise has to be done with circumspection. It is trite that wider the power greater is the responsibility on the courts which exercise it. The exercise of this power cannot be untrammelled and arbitrary but must be guided only by the object of arriving at a just decision of the case. It should not cause prejudice to the accused. It should not permit the prosecution to fill up the lacuna. Whether recall of a witness is for filling up of a lacuna or it is for just decision of a case depends on the facts and circumstances of each case. In all cases it is likely to be argued that the prosecution is trying to fill up a lacuna because the line of demarcation is thin. It is for the court to consider all the circumstances and decide whether the prayer for recall is genuine.”

7. In the matter of ***Sethuraman Vs. Rajamanickam*** reported in ***(2009) 5 SCC 153***, the Hon'ble Supreme Court has held that orders issued by the trial Court on application filed under Sections 91 and 311 of Cr.P.C. being

interlocutory in nature, revision of such orders by High Court is barred under Section 397 (2) of Cr.P.C. Section 397 (2) of Cr.P.C. reads as under:-

397. Calling for records to exercise powers of revision. –

(1) xxx xxx xxx

(2) The powers of revision conferred by sub-section (1) shall not be exercised in relation to any interlocutory order passed in any appeal, inquiry, trial or other proceeding.

8. In view of above settled position of law, instant revision petition is not maintainable. However, even otherwise from perusal of the impugned order passed by the trial Court as also evidence of PW-3, PW-4 & PW-8, it is evident that there is already cross-examination by the applicant and no specific question sought to be put to these witnesses has been mentioned and he has not disclosed as to what mistake was committed by other counsel at the time of cross-examination of PW-3, PW-4 & PW-8. The trial Court has rejected the application under Section 311 of Cr.P.C. keeping in view the judgment of Hon'ble Supreme Court in *Mannan Shaikh* case (supra) that sufficient opportunity was availed by the applicant for cross-examination of the prosecution witnesses and for filling up the lacuna, the witnesses can not be summoned for re-examination, this Court finds no illegality or perversity in the order impugned warranting interference in this case.
9. On the basis of aforesaid discussions, the revision petition is dismissed on both the counts i.e. maintainability as well as on merits.

Sd/-

(Gautam Chourdiya)
Judge