

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRMP No. 1375 of 2021**

1. Keshav Prasad @ Pandit S/o Shri Thakur Prasad Rajware Aged About 40 Years R/o Village Dalabakra, Police Station Jhilmili District Surajpur, Chhattisgarh.
2. Pappu Singh S/o Shri Mahadev Singh Gond Aged About 27 Years Resident Of Village Dalabakra, Police Station Jhilmili District Surajpur, Chhattisgarh.

---- Petitioners**Versus**

- The State of Chhattisgarh, Through : The Station House Officer, Police Station Jhilmili, District Surajpur, Chhattisgarh.

---- Respondent

For Petitioners	:	Mr. Arun Kumar Shukla, Adv.
For Respondent/State	:	Mr. Gurudev I. Sharan, G.A.

Hon'ble Smt. Justice Rajani Dubey**Order On Board****07/12/2021**

1. This petition is filed under Section 482 of Cr.P.C. against the order dated 27.09.2021 passed by the learned Additional Sessions Judge (FTC), Surajpur, (C.G.) in Session Trial No. 55/2019, whereby the learned Additional Sessions Judge rejected the application filed under Section 311 of Criminal Procedure Code.

2. Petitioner is facing trial under Section 147, 148, 149 and 302 of IPC before the learned Additional Sessions Judge (FTC) Surajpur, District-Surajpur (C.G.) in Session Trial No. 55/2019, "State of Chhattisgarh Vs. Shankar Prasad @ Bhole" and Others, during the pendency of the session trial on 31.08.2021 the petitioner had moved an application under Section 311 of Cr.P.C. before the learned Court below for recalling the witnesses of the affidavit sworn on 17.06.2020 and 31.08.2021 respectively. The learned Additional Sessions Judge

(FTC) has summarily rejected the application filed under Section 311 of Cr.P.C. Hence, this petition.

2. Learned Counsel for the petitioner submits that impugned order is bad in law, perverse and erroneous which is liable to be set aside. The petitioner had filed an application under Section 311 of Cr.P.C. for re-examination of the prosecution witness as the version of Court statements and affidavits are different. He further submits that there are settled principle of law that it is has been come to the knowledge of Court that the new documents has been filed then the Court shall call a witness for reexamination after issuing proper summon, as in this case two different versions came in the knowledge of the Court. In this regard various law have been laid down by the Hon'ble the Apex Court which has not been taken into consideration by learned lower Court so the order dated 27.09.2021 is liable to be set aside and application which was filed by the petitioner under Section 311 of Cr.P.C. may be allowed in the interest of justice.

3. Learned counsel for the State supported the impugned order.

4. Heard learned counsel for the parties and perused the material available on record including the impugned order.

5. Section 311 Cr.P.C provides power to summon material witness, or examine person present. Section 311 Cr.P.C reads as under :-

311. Power to summon material witness, or examine person present :-

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.

Corresponding Law: S. 540 of Act V of 1898.

6. A bare perusal of this Section goes to allow that at any stage of proceeding the Court has ample power to summon a person as a witness or recall or re-examine any person or party.

7. In this case before learned trial Court Shakunti (PW-6) appeared on 04.12.2019 as prosecution witness No. 6 and Sonkunwar (PW-13) appeared on 16.01.2020 as prosecution witness No. 13. Learned defence counsel cross-examined them in detail. After sometime both Sakunti and Sonkunwar filed an affidavit before learned trial Court on 31.08.2021 and on 17.06.2020 respectively, and deposed a different thing from their previous statement. Petitioner filed application under Section 311 on 31.08.2021 and learned trial Court dismissed the same on 27.09.2021 on this ground that both witnesses were already examined before trial Court and in defence petitioners have been given ample opportunity of cross-examination. Defence is trying to recall the witnesses on the basis of their affidavit which is not justified and dismissed the application which was filed by the petitioner.

8. In **Swapan Kumar Chattarjee vs. Central Bureau of Investigation** reported in **2019 Vol. 2 SCC 654** Hon'ble the Apex Court has held in para 12 which reads thus:-

“12. It is well settled that the power conferred under Section 311 should be invoked by the Court only to meet the ends of justice. The power is to be exercised only for strong and valid reasons and it should be exercised with great caution and circumspection. The court has vide power under this Section to even recall witnesses for reexamination or further examination, necessary in the interest of justice, but the same has to be exercised after taking into consideration the facts and circumstances of each case. The power under this provision shall not be exercised if the court is of the view that the application has been filed as an abuse of the process of law.”

9. It is clear that affidavits are filed in support of defence and witnesses are recalled for reexamination by the petitioner in their defence. As Hon'ble the Apex Court held that the power under this provision shall not be exercised if the Court is of the view that the application has been filed as an abuse of the process of law. Learned trial Court also found that the prayer is not justified, therefore this order is in accordance with law.

10. Consequently, I do not find any ground for interference in exercise of inherent jurisdiction. The petition is, therefore, liable to be dismissed and is hereby dismissed.

Sd/-
(Rajani Dubey)
JUDGE