

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.25147 of 2022

Arising Out of PS. Case No.-49 Year-1999 Thana- BRAHMPUR District- Buxar

Daya Shankar Prasad Son of Viswanath Prasad Resident of Village -
Brahampur Chouk, Brahampur, P.S.- Brahampur, Dist.- Buxar.

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Nafisuzzoha, Advocate

For the State : Mr. Navin Kumar Pandey, APP

CORAM: HONOURABLE MR. JUSTICE CHANDRA SHEKHAR JHA
ORAL ORDER

3 25-08-2022 1. Heard learned counsel for the petitioner and learned
APP for the State.

2. This petition has been filed for setting aside the order dated 05.04.2022 passed in Sessions Trial No. 155 of 2001 arising out of Brahampur P.S. Case No. 49 of 1999 instituted for the offence under Sections 147, 148, 149, 323, 324, 325, 341, 307 and 504 of the Indian Penal Code and later on Section 302 of the Indian Penal Code was added on 12.05.1999.

3. Learned counsel for the petitioner submitted that petitioner has filed a petition dated 07.03.2022 under Section 311 of the Cr.P.C. before the Trial Court to examine some material witnesses, as prosecution evidence was closed without, even, examining the Investigating Officer (I/O) and Doctor, who conducted the post mortem of the deceased and prepared report thereof. It is categorically stated that I/O and doctor both are



ready to depose before the Trial Court as a witness, but both were failed to appear, as they had never received any summons from the Trial Court.

4. While travelling over the argument, learned counsel for the petitioner relied upon the report of the matter, titled as ***V.N. Patil vs. K. Niranjan Kumar and others, as reported in (2021) 3 SCC 661.***

5. The scope of Section 311 CrPC which is relevant for the present purpose is reproduced hereunder:

“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.”

6. The object underlying Section 311 CrPC is that



there may not be failure of justice on account of mistake of either party in bringing the valuable evidence on record or leaving ambiguity in the statements of the witnesses examined from either side. The determinative factor is whether it is essential to the just decision of the case. The significant expression that occurs is “at any stage of any inquiry or trial or other proceeding under this Code”. It is, however, to be borne in mind that the discretionary power conferred under Section 311 CrPC has to be exercised judiciously, as it is always said “wider the power, greater is the necessity of caution while exercise of judicious discretion”.

7. The principles related to the exercise of the power under Section 311 CrPC have been well settled by this Court in *Vijay Kumar v. State of U.P.* [*Vijay Kumar v. State of U.P.*, (2011) 8 SCC 136 : (2011) 3 SCC (Cri) 371 : (2012) 1 SCC (L&S) 240] : (SCC p. 141, para 17)

“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.”

8. This principle has been further reiterated in *Mannan Shaikh v. State of W.B.* [*Mannan Shaikh v. State of W.B.*, (2014) 13 SCC 59 : (2014) 5 SCC (Cri) 547] and thereafter in *Ratanlal v. Prahlad Jat* [*Ratanlal v. Prahlad Jat*, (2017) 9 SCC 340 : (2017) 3 SCC (Cri) 729] and *Swapan Kumar Chatterjee v. CBI* [*Swapan Kumar Chatterjee v. CBI*, (2019) 14 SCC 328 : (2019) 4 SCC (Cri) 839] . The relevant paragraphs of *Swapan Kumar Chatterjee* [*Swapan Kumar Chatterjee v. CBI*, (2019) 14 SCC 328 : (2019) 4 SCC (Cri)



839] are as under: (*Swapan Kumar Chatterjee case [Swapan Kumar Chatterjee v. CBI, (2019) 14 SCC 328 : (2019) 4 SCC (Cri) 839]* , SCC p. 331, paras 10-11)

“10. The first part of this section which is permissive gives purely discretionary authority to the criminal court and enables it at any stage of inquiry, trial or other proceedings under the Code to act in one of the three ways, namely, (i) to summon any person as a witness; or (ii) to examine any person in attendance, though not summoned as a witness; or (iii) to recall and re-examine any person already examined. The second part, which is mandatory, imposes an obligation on the court (i) to summon and examine, or (ii) to recall and re-examine any such person if his evidence appears to be essential to the just decision of the case.

11. 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 re-examination 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. The aim of every court is to discover the truth. Section 311 CrPC is one of many such provisions which strengthen the arms of a court in its effort to unearth the truth by procedure sanctioned by law. At the same time, the discretionary power vested under Section 311 CrPC has to be exercised judiciously for strong and valid reasons and with caution and circumspection to meet the ends of justice.

10. Learned APP, Mr. Navin Kumar Pandey, appearing on behalf of the State submitted that impugned order dated



05.04.2022 of learned Trial Court is reasoned and speaking. It is submitted that evidence was closed on 19.08.2016 in this case, where petitioner as accused has already been examined u/s 313 of the Cr.P.C., thereafter, a gap of six years, when the matter was listed for argument, a petition was filed to examine I/O and doctor. Learned APP, while concluding the argument, pointed out that this Court in similar matter had already rejected the prayer of the petitioner through Cr. Misc. No. 43231 of 2012 dated 23.04.2015 in the matter of ***Mahendra Prasad @ Mahendra Yadav vs. State of Bihar.***

11. It does not appears from perusal of record including order under challenge, whether I/O and doctor of the case received any summons from the Trial Court, at any point of time, to join the proceedings as witnesses. Impugned order is also not speaking, as regard to the fact that what steps were taken to ensure the presence of these material witnesses, particularly, in heinous offence u/s 302 of the Indian Penal Code. Any negligence on the part of the petitioner, not authorizing the Trial Court to ignore its legal obligation to procure all relevant evidence, which is essential for just decision of the case and to unearth the truth to meet end of justice.

12. Considering the same, order dated 05.04.2022, passed



in Sessions Trial No. 155 of 2001 arising out of Brahampur P.S.
Case No. 49 of 1999 by Additional District Judge-IX, Buxar, is
set aside.

13. Accordingly, the present quashing petition stands
allowed.

14. Superintendent of Police, Buxar is directed to ensure
the presence of both I/O and the doctor, as and when directed by
the Trial Court.

15. Trial Court is directed to conclude the trial within
three months from the date of receipt of this order.

(Chandra Shekhar Jha, J)

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