

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLMC No.2683 of 2011

Krupasindhu Mallick.

....

Petitioner

-versus-

State of Odisha & others.

....

Opposite Parties

CORAM: JUSTICE S.PUJAHARI

ORDER
04.05.2022

Order No.

- 09.
1. This matter is taken up through Hybrid mode.
 2. The petitioner in this application under Section 482 of the Code of Criminal Procedure (for short “Cr.P.C.”) has prayed for quashing of the order dated 28.06.2011 passed by the learned Asst. Sessions Judge, Anandapur in S.T. Case No.43/160 of 2008 rejecting the petition filed by the prosecution to summon three witnesses for their examination on behalf of the prosecution.
 3. Heard the learned counsel for the petitioner and the learned counsel for the State.
 4. As it appears, when the case was at the stage of defence evidence, a petition was filed on behalf of the prosecution to

summon three more witnesses who are not the charge-sheeted witnesses in exercise of power under Section 311 of Cr.P.C. The trial Court after hearing the parties, by a reasoned order refused to entertain the prayer which is impugned here in this application. As it further appears, during the course of hearing the Addl. P.P did not support the petition filed by the earlier Asst. P.P. and also submitted that examination of those witnesses will not improve the case of the prosecution in any manner. The defence counsel also objected the same. In such premises, on going through the materials available on record, when it was not mentioned by the prosecution how the examination of those witnesses under Section 311 of Cr.P.C. would improve the case of the prosecution or essential to the just decision of the case, the trial Court has rejected the prayer made.

5. Learned counsel for the petitioner has assailed the impugned order on the ground that when the APP had filed a petition the subsequent APP could not have taken a stand that the examination of those witnesses was not essential for just decision of the case. In such premises, he submit that the impugned order is liable to be set-aside the trial Court be directed to examine those witnesses, even if they are not charge-sheeted as there is no impediment to examine a witness, even if he has not been charge-sheeted on behalf of the prosecution in exercise of power under Section 311 of Cr.P.C.

6. Learned counsel for the State does not reproach on the submission of the learned counsel for the petitioner.

7. The aforesaid principle of law is also well settled. But, when the Court on examination of the petition did not find that the examination of the said witnesses, who are not charge-sheeted, to be essential for the just decision of the case and the counsel appearing for the petitioner could not substantiate the same, this Court, therefore, finds no merit in the petition under Section 311 of Cr.P.C. filed before the Court below.

8. Hence, this CRLMC filed challenging the impugned order of the trial Court being devoid of merit stands dismissed. Interim order dated 12.09.2011 passed by this Court stands vacated. The trial Court is directed to proceed with the trial of the aforesaid case and conclude the same as early as possible preferably within a period of three months of receipt of the certified copy of this order.

9. A copy of this order be communicated to the Court below forthwith.

(S. Pujahari)
Judge

MRS