

**IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
APPELLATE SIDE**

The Hon'ble **JUSTICE SUVRA GHOSH**

CRR 224 of 2023

Sri Budh Ram Gurung

V/s.

Union of India and Anr.

For the Petitioner: Mr. Pritam Roy, Adv.

For the State: Mr. Aditi Shankar Chakraborty, Adv.,
Mr. Aniruddha Biswas, Adv.

For the Respondent No. 1. Mr. Ratan Banik, Adv.
Mr. Saptarshi Banik, Adv.

Heard on: 24.04.2024

Date: 30.04.2024

SUVRA GHOSH, J. :-

1. In the present application under Sections 397/401 read with Section 482 of the Code of Criminal Procedure, the petitioner has prayed for setting aside the order passed by the learned Judge, Special Court, NDPS Act, Siliguri on 27th July, 2023 in CR (NDPS) 34 of 2015 rejecting the petition filed by the petitioner under Section 311 of the Code.
2. Learned counsel for the petitioner has submitted that cross examination of prosecution witnesses no. 1 and 2 was done by an earlier learned counsel and upon appointment of the present learned counsel by the petitioner through Legal Services Authority on 15th November, 2021, it was discovered that a few questions and suggestions were required to be

put to PW-1 and PW-2 for fair trial. The accused-petitioner is in custody till date and since the NDPS Act prescribes very stringent and severe punishment for the convicts under Section 20(b)(ii)(C) of the Act, the suggested questions as stated in the application under Section 311 of the Code need to be placed for proving the innocence of the accused-petitioner. The questions could not be put to the witnesses due to laches of the earlier learned counsel and the petitioner cannot be made to suffer due to such laches. Learned counsel has placed reliance on the authorities in *Manju Devi v/s. State of Rajasthan* and *Another* reported in (2019) 6 SCC 203, *Satbir Singh v/s. State of Haryan & Ors.* reported in 2023 INSC 786, *P. Sanjeeva Rao v/s. The State of A.P* reported in AIR 2012 Supreme Court 2242 and *P.Chhaganlal Daga v/s. M. Sanjay Shaw* reported in (2003) 11 SCC 486 in support of his contention.

3. In refuting the contention of the petitioner, learned counsels for the opposite parties have submitted that evidence of the case was concluded on 24th August, 2022 and the accused-petitioner was examined under Section 313 of the Code on 31st March, 2023. The application under Section 311 of the Code was filed on 27th July, 2023 i.e., much after examination of the accused under Section 313. The petition has been filed in order to fill up the lacunae in the cross examination conducted earlier and to protract the proceedings.
4. It transpires from the record that examination of the prosecution witnesses was concluded on 24th August, 2022 and accused-petitioner was examined under Section 313 of the Code of Criminal Procedure on

31st March, 2023. The application under Section 311 of the Code was filed on 27th July, 2023.

5. In the authority in Manju Devi (supra), the Hon'ble Supreme Court has dealt with the scope and object of the provision under Section 311 of the Code. In the words of the Hon'ble Court, "The scope and object of the provision is to enable the court to determine the truth and to render a just decision after discovering all relevant facts and obtaining proper proof of such facts, to arrive at a just decision of the case. Power must be exercised judiciously and not capriciously or arbitrarily, as any improper or capricious exercise of such power may lead to undesirable results. An application under Section 311 CrPC must not be allowed only to fill up a lacuna in the case of the prosecution, or of the defence, or to the disadvantage of the accused, or to cause serious prejudice to the defence of the accused, or to give an unfair advantage to the opposite party. Further, the additional evidence must not be received as a disguise for retrial, or to change the nature of the case against either of the parties. Such a power must be exercised, provided that the evidence that is likely to be tendered by a witness, is germane to the issue involved."
6. The said ratio has been echoed in the authority in P. Sanjeeva Rao (supra) wherein the Hon'ble Supreme Court has held that "the object underlying Section 311 of the Code 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 section is not limited only for the benefit of the accused, and it will not be an improper exercise of the powers of the Court to summon a witness under the Section merely because the evidence supports the case of the prosecution and not that of the accused. The section is a general section which applies to all proceedings, enquiries and trials under the Code and empowers the Magistrate to issue summons to any witness at any stage of such proceedings, trial or enquiry. In Section 311 the significant expression that occurs is “at any stage of inquiry or trial or other proceeding under this Code”. It is, however, to be borne in mind that whereas the section confers a very wide power on the Court on summoning witnesses, the discretion conferred is to be exercised judiciously, as the wider the power the greater is the necessity for application of judicial mind.”

7. In the present case, the primary contention of the petitioner is that the earlier learned counsel who represented him failed to put certain questions to PW-1 and PW-2 while cross examining them which was discovered by the present learned counsel. It is a fact that there has been some delay in filing the application under Section 311 of the Code. But at the same time, it appears from the suggested questions contained in the application that they are relevant for the purpose of proper adjudication of the case. The provision itself allows the petitioner to file such application at any stage of the proceeding/trial for a just decision

to be arrived at. Also, the petitioner should not be made to suffer for any laches on the part of his learned counsel. It is to be borne in mind that the offence alleged is extremely serious in nature and prescribes stringent punishment. Therefore the accused-petitioner ought to be granted an opportunity to further cross examine PW-1 and PW-2 in terms of the suggested questions made in the application in order to ensure a just decision in the case and the application should not be turned down merely on the ground of delay. Allowing the application shall not prejudice the prosecution in any manner.

8. In the said backdrop, the application being CRR 224 of 2023 is allowed.
9. The order passed by the Learned Judge, Special Court, NDPS Act, Siliguri on 27th July, 2023 in CR (NDPS) 34 of 2015 is set aside.
10. The petition under Section 311 of the Code of Criminal Procedure is allowed.
11. The accused-petitioner is permitted to cross examine the PW-1 and PW-2 in terms of the suggested questions made in the petition on any date/dates to be fixed by the learned trial Court within 4 weeks from the date of communication of this judgment.
12. The learned trial Court shall not grant any unnecessary adjournment to any of the parties on the said dates.
13. Copy of this judgment be sent to the learned Judge, Special Court, NDPS Act, Siliguri for compliance.
14. There shall however be no order as to costs.
15. Lower Court record be returned.

16. Urgent certified website copies of this judgment, if applied for, be supplied to the parties expeditiously on compliance with the usual formalities.

(Suvra Ghosh, J)