



2024:UHC:6689

HIGH COURT OF UTTARAKHAND AT NAINITAL

Criminal Revision No. 639 of 2024

13 September, 2024

1: Balveer Singh

2: Vikram

...Revisionist

Versus

1: State Of Uttarakhand

2: Shri Ganga Ram

3: Shrimati Bhagwati

4: Shakti Singh

...Respondent

Presence:-

Ms. Chetna Latwal, Advocate for the Applicant.

Mr. Shaurabh Pande, learned Brief Holder for the State.

JUDGMENT

1. This criminal revision has been filed under Section 442 of Bhartiya Nagrik Suraksha Sanhita, 2023 challenging the order dated 30.07.2024 passed by 1st Additional Sessions Judge, Kashipur, District Udham Singh Nagar in Sessions Trial No. 184 of 2022. By the said order, application filed by revisionists for recall of prosecution witnesses, under Section 311 of CrP.C. was rejected.

2. FIR No. 0287 of 2022 was registered on 17.06.2022 in Police Station Bajpur, District Udham Singh Nagar, under Section 302 IPC, in which both revisionists were also named as accused. Upon investigation, Investigating Officer filed a charge-sheet and revisionists are facing trial in the court of 1st Additional Sessions Judge, Kashipur (Sessions Trial No. 184 of 2022). In the said trial, statement of P.W.1 was



2024:UHC:6689

recorded in the month of December, 2022, while Statement of P.W.-2 and P.W.3 were recorded in February, 2023. True copy of statements of these three witnesses are on record as Annexure 3 to the criminal revision, perusal whereof indicates that the Defence Counsel had extensively cross-examined these prosecution witnesses.

3. After more than a year of recording statement of P.W.1, P.W.2 & P.W.3, an application, under Section 311 of Cr.P.C. was moved on 21.05.2024 on behalf of revisionists for recall of these prosecution witnesses, on the ground that certain relevant questions could not asked from them. Learned 1st Additional Sessions Judge rejected the application vide order dated 30.07.2024 by holding that prayer for recall of witnesses is not justified. Thus, feeling aggrieved, revisionists have approached this Court.

4. Heard Ms. Chetna Latwal, learned counsel for the revisionists, Mr. Shaurabh Pande, learned Brief Holder for the State of Uttarakhand and perused the record.

5. Learned trial court has given valid reasons for rejecting the prayer for recall of witnesses made by revisionists. It is held that all the three prosecution witnesses were thoroughly cross-examined by Defence Counsel more than a year ago and the ground taken for seeking recall of witnesses is not sufficient.

6. Section 311 of Cr.P.C. is extracted below for



ready reference:-

“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 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.”

7. A plain reading of Section 311 of Cr.P.C. reveals that it enables a Court to summon any person as witness or examine any person in attendance though not summoned, or recall or re-examine any person, who has been examined; if his evidence appears to the Court to be essential to the just decision of the case. Thus, Section 311 of Cr.P.C. does not create any right for recall of witness in favour of any party to the proceeding and the said Section empowers a Court to recall and re-examine a witness to ensure 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.

8. In the case of *Ratanlal vs. Prahlad Jat*, reported in (2017) 9 SCC 340, Hon’ble Supreme Court, while discussing the scope of Section 311 Cr.P.C., has held as under:-

“17. In order to enable the court to find out the truth and render a just decision, the salutary provisions of Section 311 are enacted whereunder any court by exercising its discretionary authority at any stage of inquiry, trial or other proceeding can summon any person as witness or examine any person in attendance though not summoned as a witness or recall or re-examine any person already examined who are expected to be able to throw light upon the matter in dispute. The object of the provision



as a whole is to do justice not only from the point of view of the accused and the prosecution but also from the point of view of an orderly society. This power is to be exercised only for strong and valid reasons and it should be exercised with caution and circumspection. Recall is not a matter of course and the discretion given to the court has to be exercised judicially to prevent failure of justice. Therefore, the reasons for exercising this power should be spelt out in the order.

18. 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] , this Court while explaining scope and ambit of Section 311 has held as under: (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 [CrPC] 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.”

19. In *Zahira Habibullah Sheikh (5) v. State of Gujarat* [Zahira Habibullah Sheikh (5) v. State of Gujarat, (2006) 3 SCC 374 : (2006) 2 SCC (Cri) 8] , this Court has considered the concept underlying under Section 311 as under: (SCC p. 392, para 27)

“27. 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 any 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.”

20. In *State (NCT of Delhi) v. Shiv Kumar*



Yadav [State (NCT of Delhi) v. Shiv Kumar Yadav, (2016) 2 SCC 402 : (2016) 1 SCC (Cri) 510] , it was held thus: (SCC pp. 404g-405a)

“... Certainly, recall could be permitted if essential for the just decision, but not on such consideration as has been adopted in the present case. Mere observation that recall was necessary “for ensuring fair trial” is not enough unless there are tangible reasons to show how the fair trial suffered without recall. Recall is not a matter of course and the discretion given to the court has to be exercised judiciously to prevent failure of justice and not arbitrarily. While the party is even permitted to correct its bona fide error and may be entitled to further opportunity even when such opportunity may be sought without any fault on the part of the opposite party, plea for recall for advancing justice has to be bona fide and has to be balanced carefully with the other relevant considerations including uncalled for hardship to the witnesses and uncalled for delay in the trial. Having regard to these considerations, there is no ground to justify the recall of witnesses already examined.”

21. The delay in filing the application is one of the important factors which has to be explained in the application. In *Umar Mohammad v. State of Rajasthan* [Umar Mohammad v. State of Rajasthan, (2007) 14 SCC 711 : (2009) 3 SCC (Cri) 244] , this Court has held as under: (SCC p. 719, para 38)

“38. Before parting, however, we may notice that a contention has been raised by the learned counsel for the appellant that PW 1 who was examined in Court on 5-7-1994 purported to have filed an application on 1-5-1995 stating that five accused persons named therein were innocent. An application filed by him purported to be under Section 311 of the Code of Criminal Procedure was rejected by the learned trial Judge by order dated 13-5-1995. A revision petition was filed thereagainst and the High Court also rejected the said contention. It is not a case where *stricto sensu* the provisions of Section 311 of the Code of Criminal Procedure could have been invoked. The very fact that such an application was got filed by PW 1 nine months after his deposition is itself a pointer to the fact that he had been won over. It is absurd to contend that he, after a period of four years and that too after his examination-in-chief and cross-examination was complete, would file an application on his own will and volition. The said application was, therefore, rightly dismissed.”

9. Similarly in the case of *Manju Devi vs. State of Rajasthan*, reported in (2019) 6 SCC 203, Hon’ble Supreme Court emphasized that a discretionary power



like Section 311 Cr.P.C. is to enable the Court to keep the record straight and to clear any ambiguity regarding the evidence, whilst also ensuring that no prejudice is caused to anyone.

10. In the case of *Swapan Kumar Chatterjee vs. Central Bureau of Investigation, reported in (2019) 14 SCC 328*, Hon'ble Supreme Court has summarized the legal position thus:-

“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.

12. Where the prosecution evidence has been closed long back and the reasons for non-examination of the witness earlier are not satisfactory, the summoning of the witness at belated stage would cause great prejudice to the accused and should not be allowed. Similarly, the court should not encourage the filing of successive applications for recall of a witness under this provision.”

11. In the case of *Harendra Rai vs. State of Bihar, reported in 2023 SCC OnLine SC 1023*, Hon'ble Supreme Court expressed the opinion that Section 311 Cr.P.C. should be invoked when “it is essential for the



just decision of the case”.

12. Similar view has been expressed by Hon'ble Supreme Court in a recent judgment in the case of *Satbir Singh vs State of Haryana & others*, reported in 2023 SCC OnLine SC 1086.

13. In the present case, all the three prosecution witnesses, who are sought to be recalled, were subjected to detailed cross-examination by Defence Counsel. The application for recall has been filed after nearly 1½ year. Learned trial court was justified in rejecting the application for recall.

14. This Court concurs with the reasoning given by learned trial court for rejecting the application filed by the revisionists. Thus, there is no scope of interference with the impugned order.

15. Accordingly, the criminal revision fails and is dismissed.

(MANOJ KUMAR TIWARI, J.)

Aswal

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