



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL REVISION APPLICATION NO. 328 OF 2024

Chandrashen s/o Surybhan Waghmare

Age: 57 years, Occ: Service,

R/o: Kalsumbar, Taluka Beed,

Dist. Beed.

At Present Vishal Nagar,

Near Nirmaldevi School, Latur.

... Applicant

versus

State of Maharashtra

... Respondent

.....

Mr. Madhav Gude with Ms. J. R. Reddy, Advocates for the Applicant.

Mr. N. D. Batule, APP for Respondent-State.

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CORAM : ABHAY S. WAGHWASE, J.

DATED : 06.02.2025

ORDER :

1. Revisionist-original accused facing trial for charge under Section 306 r/w 34 of IPC and arraigned as accused no.3 therein, is aggrieved by the order passed by learned Additional Sessions Judge on Exhibit 178 in Sessions Case No. 70 of 2014 dated 29.11.2024 allowing the application moved by prosecution under Section 311 of Cr.P.C.

2. Learned counsel pointed out that present revisionist is facing trial vide Sessions Case No. 70 of 2014 before learned Additional Sessions Judge, Ambajogai. He pointed out that evidence of prosecution is over. Evidence close pursis is already tendered by learned APP. Learned trial court thereafter proceeded to record statement of accused under Section 313 of Cr.P.C. on 27.02.2024 and matter was thus posted for judgment. However, he further pointed out that, thereafter learned APP moved application Exhibit 178 on 20.03.2024 praying to invoke Section 311 of Cr.P.C. for recalling handwriting expert. That, applicant accused had resisted above application on the ground that the so called document sought to be exhibited through proposed handwriting expert was not supplied to him under Section 207 of Cr.P.C. Secondly, it would amount to causing prejudice to the accused as matter was already posted for judgment. Learned counsel submitted that learned trial court ought not to have granted the application moved by prosecution. That, law does not permit filling up lacuna at later point of time. As the impugned order at Exhibit 178 infringes the valuable right of accused to defend, learned counsel prays to quash and set aside the same.

3. Learned APP strongly opposed pointing out that there is no dispute that statement of accused under Section 313 of Cr.P.C. was recorded and there is no further dispute that matter was posted for judgment. However, he further pointed out that prior to the judgment itself, prosecution had realized that there was a suicide note but it was misplaced and not traced. Subsequently, it was traced in *muddemal*. It was an important piece of evidence and was very essential for prosecution, more particularly in view of the charge being under Section 306 IPC, and the purported document which is now sought to be got proved, is in fact a suicide note and is very important document for prosecution and learned trial court committed no error in allowing application Exhibit 178.

4. After considering the submissions of each side, there seems to be challenge to the order passed on an application moved by prosecution under Section 311 of Cr.P.C. permitting handwriting expert to be called for examination and for proving a document.

5. Before advertng to the merits of the matter and the validity of the order, it would be profitable to deal with settled governing principles which are to be borne in mind by court while invoking Section 311 of Cr.P.C. The Hon'ble Supreme Court in the case of

Rajaram Prasad Yadav v. State of Bihar and another AIR 2013 SC

3081, in para 23 has observed as under :

“23. From a conspectus consideration of the above decisions, while dealing with an application under Section 311 Cr.P.C. read along with Section 138 of the Evidence Act, we feel the following principles will have to be borne in mind by the Courts:

a) Whether the Court is right in thinking that the new evidence is needed by it? Whether the evidence sought to be led in under Section 311 is noted by the Court for a just decision of a case?

b) The exercise of the widest discretionary power under Section 311 Cr.P.C. should ensure that the judgment should not be rendered on inchoate, inconclusive speculative presentation of facts, as thereby the ends of justice would be defeated.

c) If evidence of any witness appears to the Court to be essential to the just decision of the case, it is the power of the Court to summon and examine or recall and re-examine any such person.

d) The exercise of power under Section 311 Cr.P.C. should be resorted to only with the object of finding out the truth or obtaining proper proof for such facts, which will lead to a just and correct decision of the case.

e) The exercise of the said power cannot be dubbed as filling in a lacuna in a prosecution case, unless the facts and circumstances of the case make it apparent that the exercise of power by the Court would result in causing serious prejudice to the accused, resulting in miscarriage of justice.

f) The wide discretionary power should be exercised judiciously and not arbitrarily.

g) The Court must satisfy itself that it was in every respect essential to examine such a witness or to recall him for further examination in order to arrive at a just decision of the case.

h) The object of Section 311 Cr.P.C. simultaneously imposes a duty on the Court to determine the truth and to render a just decision.

i) The Court arrives at the conclusion that additional evidence is necessary, not because it would be impossible to pronounce the judgment without it, but because there would be a failure of justice without such evidence being considered.

j) Exigency of the situation, fair play and good sense should be the safe guard, while exercising the discretion. The Court should bear in mind that no party in a trial can

be foreclosed from correcting errors and that if proper evidence was not adduced or a relevant material was not brought on record due to any inadvertence, the Court should be magnanimous in permitting such mistakes to be rectified.

k) The Court should be conscious of the position that after all the trial is basically for the prisoners and the Court should afford an opportunity to them in the fairest manner possible. In that parity of reasoning, it would be safe to err in favour of the accused getting an opportunity rather than protecting the prosecution against possible prejudice at the cost of the accused. The Court should bear in mind that improper or capricious exercise of such a discretionary power, may lead to undesirable results.

l) The additional evidence must not be received as a disguise or to change the nature of the case against any of the party.

m) The power must be exercised keeping in mind that the evidence that is likely to be tendered, would be germane to the issue involved and also ensure that an opportunity of rebuttal is given to the other party.

n) The power under Section 311 Cr.P.C. must therefore, be invoked by the Court only in order to meet the ends of justice for strong and valid reasons and the same must be exercised with care, caution and circumspection. The

Court should bear in mind that fair trial entails the interest of the accused, the victim and the society and, therefore, the grant of fair and proper opportunities to the persons concerned, must be ensured being a constitutional goal, as well as a human right.”

6. Thus, the ratio that can be culled out from above, which is very lucidly spelt out in the case of ***Rajaram Prasad Yadav*** (supra), is borrowed and quoted as under :

“14. A conspicuous reading of Section 311 Cr.P.C. would show that widest of the powers have been invested with the Courts when it comes to the question of summoning a witness or to recall or re-examine any witness already examined. A reading of the provision shows that the expression “any” has been used as a pre-fix to “court”, “inquiry”, “trial”, “other proceeding”, “person as a witness”, “person in attendance though not summoned as a witness”, and “person already examined”. By using the said expression “any” as a pre-fix to the various expressions mentioned above, it is ultimately stated that all that was required to be satisfied by the Court was only in relation to such evidence that appears to the Court to be essential for the just decision of the case. Section 138 of the Evidence Act, prescribed the order of examination of a witness in the Court. Order of re-examination is also prescribed calling for such a witness so desired for such

re-examination. Therefore, a reading of Section 311 Cr.P.C. and Section 138 Evidence Act, insofar as it comes to the question of a criminal trial, the order of re-examination at the desire of any person under Section 138, will have to necessarily be in consonance with the prescription contained in Section 311 Cr.P.C. It is, therefore, imperative that the invocation of Section 311 Cr.P.C. and its application in a particular case can be ordered by the Court, only by bearing in mind the object and purport of the said provision, namely, for achieving a just decision of the case as noted by us earlier. The power vested under the said provision is made available to any Court at any stage in any inquiry or trial or other proceeding initiated under the Code for the purpose of summoning any person as a witness or for examining any person in attendance, even though not summoned as witness or to recall or re-examine any person already examined. Insofar as recalling and re-examination of any person already examined, the Court must necessarily consider and ensure that such recall and re-examination of any person, appears in the view of the Court to be essential for the just decision of the case. Therefore, the paramount requirement is just decision and for that purpose the essentiality of a person to be recalled and re-examined has to be ascertained. To put it differently, while such a widest power is invested with the Court, it is needless to state that exercise of such power should be made judicially and also with extreme care and caution.”

7. Keeping above ratio in mind and on going through the impugned judgment, it is emerging that revisionist is facing trial for commission of offence under Section 306 r/w 34 of IPC. There is no dispute that after commencement of trial, prosecution adduced its evidence and even tendered evidence close pursis. Matter seems to be posted for recording statement of accused under Section 313 of Cr.P.C. on 27.02.2024 and after hearing arguments, even learned trial court proceeded to post the matter for judgment. However, on 20.03.2024, application Exhibit 178 seems to be pressed into service by learned APP by invoking Section 311 of Cr.P.C. contending therein that suicide note was not traceable though it was seized, and at subsequent point of time it was found in *muddemal*. All such supervening events are known to the court itself and therefore the suicide note having been found in *muddemal*, which went there inadvertently, is a crucial document for prosecution and hence permission was sought to invoke Section 311 of Cr.P.C. to allow the prosecution to call handwriting expert.

8. Above application obviously was resisted by accused, as stated above, on two fundamental grounds that are agitated. Firstly, suicide note was not supplied to the accused under Section 207 Cr.P.C. and

secondly, evidence having been closed, arguments being finished and matter being posted for judgment, now it is not open for prosecution to fill up the lacuna and thirdly, allowing application would cause serious prejudice to the accused.

9. Here, from the impugned order, more particularly para 6 onwards, it is clearly emerging that suicide note which was seized by the investigating machinery, was not produced during trial as it was not traceable. However, para 7 of the impugned order itself shows that learned trial court has observed that suicide note was not found and was finally traced in *muddemal* property and therefore learned trial court has allowed application of prosecution.

10. As regards the grounds of resistance are concerned, this Court is of considered opinion, more particularly in view of settled law discussed above, that prior to judgment, for ends of justice to meet and for just decision, when court is convinced that particular evidence is necessary, in such circumstances, court has powers to allow production of evidence or leading evidence. It is very much permissible, much before pronouncement of judgment. Even otherwise, accused would get opportunity to cross-examine the handwriting expert and as such, ground of prejudice likely to be

caused has also no force. Therefore, there being no merits in the revision, following order is passed :

ORDER

The Criminal Revision Application is rejected.

[ABHAY S. WAGHWASE, J.]

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