



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CRIMINAL WRIT PETITION NO.908 OF 2023

Sushruth Rajeshwar Nistane .Vs. Subham Premkishor Mozare

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Shri Bhushan Dafle, Advocate for petitioner.

Shri A.M. Tirukh, Advocate for respondent.

CORAM : ANIL S. KILOR, J.

DATED : 06/02/2025

1. Heard.
2. The application under Section 311 of the Code of Civil Procedure, 1973 (hereinafter referred to as "Cr.P.C.") moved by the respondent for permission to examine the complainant, was allowed by the trial Court vide order dated 17.08.2022. The same was challenged before the Revisional Court i.e. Additional Sessions Judge, Amravati, by filing a Revision under Section 397 of the Cr.P.C. The said Revision came to be rejected on merit as well as on the ground that, it is not maintainable, vide judgment and order dated 18.07.2023.
3. The respondent is the complainant and the petitioner is the respondent in a complaint under Section 138 of the Negotiable Instruments Act, 1881. Before closing of the evidence of the complainant, he moved an application under Section 311 of the Cr.P.C. for recalling of the complainant for re-examination. The reasons for

moving such application is specifically stated in paragraph-3 of the application which read thus :-

“3. It is submitted that, the complainant wants to prove the said documents which were filed on the record today as the said documents are pertaining to the said documents are pertaining to the subsequent developments which took place in this case after filing of the evidence affidavit on dated 24.01.2020. Therefore, the complainant is filing this application under Section 311 of Cr.P.C. for further re-examination of himself on oath, so also, for his cross examination.”

4. From the above referred paragraph, it is evident that, the purpose to recall the witnesses was to lead evidence as regards the subsequent event which took place after filing of the evidence on affidavit dated 24.01.2020.

5. At this stage, it is beneficial to consider Section 311 of the Cr.P.C. which read thus :-

“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. Thus, it is evident that, power under Section 311 of the Cr.P.C. is discretionary.

7. The Hon'ble Supreme Court of India in the case of ***State (NCT of Delhi) ..vs.. Shiv Kumar Yadav and another***, reported in (2016) 2 SCC 402, while summarizing

the law in respect of Section 311 of the Cr.P.C., has observed thus :-

“13. After referring to the earlier decisions on the point, the Court culled out the following principles to be borne in mind : (Rajaram case³, SCC pp.473-74, para 17)

“17.1. 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 ?

17.2. The exercise of the widest discretionary power under Section 311 CrPC should ensure that the judgment should not be rendered on inchoate, inconclusive and speculative presentation of facts, as thereby the ends of justice would be defeated.

17.3. 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.

17.4. The exercise of power under Section 311 CrPC 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.

17.5. 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.

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

17.7. 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.

17.8. The object of Section 311 CrPC simultaneously imposes a duty on the court to determine the truth and to render a just decision.

17.9. 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.

17.10. Exigency of the situation, fair play and good sense should be the safeguard, 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.

17.11. 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.

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

17.13. 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.

17.14. The power under Section 311 CrPC 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."

8. In the present matter, the learned Judicial Magistrate First Class, Amravati has recorded the reasons for allowing the application and it is evident therefrom, that the Court has considered the reasons stated by the complainant in the application for recall of witnesses and after considering such reasons, the Court found, it necessary to the just decision of the case.

9. The Revisional Court while rejecting the application though held that revision application is not maintainable, recorded the findings on merit holding that the reasons recorded by the learned Judicial Magistrate First Class, Amravati are just and proper.

10. The learned counsel for the petitioner though denied that the evidence which the complainant wants to bring on record is not in relation to the subsequent events, in the reply filed to the application under Section 311 of the Cr.P.C. there is no denial to the such fact. In the circumstances, the said ground does not survive.

11. As far as the other argument that the complainant would abuse the order as he wants to fill the lacuna. Such argument cannot be accepted for the reasons that, in paragraph-3 of the application, the complainant has stated a specific purpose beyond which the complainant cannot be permitted to examine the witnesses. Furthermore, the petitioner is having every opportunity to cross-examine the complainant and also to raise objection if permissible under the law, if it is found that the purpose of calling of witnesses is being abused by attempting to fill up the lacuna.

12. In the circumstances, I do not find any merit in the present writ petition. Accordingly, it is **dismissed**.

JUDGE