

**IN THE HIGH COURT OF MADHYA PRADESH
AT INDORE
BEFORE**

**HON'BLE SHRI JUSTICE SUSHRUT ARVIND
DHARMADHIKARI**

&

HON'BLE SHRI JUSTICE PRAKASH CHANDRA GUPTA

ON THE 12th OF MAY, 2023

MISC. CRIMINAL CASE No. 17874 of 2023

BETWEEN:-

**DR. SAURAB S/O GARIB C. GUPTA
AGED ABOUT 39 YEARS, OCCUPATION: SERVICE
WZ 235 SADH NAGAR
PALAM DELHI (DELHI)-110045**

.....PETITIONER

**(SHRI VINAY SARAF, SR. ADVOCATE WITH SHRI SHRI KETAN GARHWAL,
ADVOCATE FOR THE PETITIONER)**

AND

**CENTRAL BUREAU OF INVESTIGATION
VYAPAM SCAM BHOPAL
THROUGH THE STANDING COUNSEL FOR CBI
GOVERNMENT OF INDIA
DISTRICT INDORE (MADHYA PRADESH)**

.....RESPONDENT

(SHRI HIMANSHU JOSHI, DY. S. G. FOR THE RESPONDENT)

*This application coming on for admission this day, **JUSTICE
PRAKASH CHANDRA GUPTA** passed the following:*

ORDER

With the consent, heard finally.

This petition under Section 482 of the Code of Criminal Procedure, 1973 (*hereinafter referred as "Cr.P.C."*) has been preferred by the petitioner/accused against the order dated 12.04.2023, passed by the Special Judge, Vyapam, Indore in S. T. No.437/2016, whereby learned Trial Court has allowed the application under Section 311 of Cr.P.C. filed by the respondent/prosecution.

2. Brief facts giving rise to this petition are that S. T. No.437/2016, offence under Sections 417, 418, 420, 467, 468, 471 & 120-B of IPC alongwith Section 3/4 of the M. P. Recognized Examinations Act, 1937 is pending before the Trial Court, against the petitioner and other co-accused person. After completion of prosecution as well as defence evidence, the case was posted for final argument. On 11.03.2023, final arguments were advanced and completed by the counsel for the petitioner. On 17.03.2023 and 24.03.2023, the case was posted for remaining final arguments for the co-accused, Purushottam Khoiya. Meanwhile, on 24.03.2023, the respondent/prosecution had filed an application u/S 311 of Cr.P.C. After hearing both the parties, learned Trial Court has passed the impugned order and allowed the aforesaid application and has ordered to recall the witnesses namely, Anil Sharma, Handwriting Expert Senior Scientist (document) CFSL New Delhi; and Rakesh Bisht, Senior Scientific Officer Photo and

Scientific, CFSL New Delhi to prove “report on comparison of photographs” (Annexure-P/3) and “handwriting expert report” (Annexure-P/4).

3. Criticizing the impugned order, learned counsel for the petitioner submits that learned Trial Court has committed grave error of law and facts as the same is against the settled principle of law. Learned Trial Court has failed in not considering the material facts of the case. Annexure-P/3 and P/4 were well within the knowledge of the prosecution but no sufficient reason is given as to why the application u/S 311 of Cr.P.C. was not filed previously. Furthermore, learned Trial Court had closed the prosecution evidence twice alongwith arguing finally twice already. The delay remains unexplained in the application u/S 311 of Cr.P.C. as well. Such practices should not be allowed to fill the lacunae. Reliance has been placed by the counsel in the case of ***Mannan S.K. and Ors. V State of West Bengal and Anr. [AIR 2014 SC 2950]***.

4. Learned counsel for the respondent has supported the impugned order.

5. We have heard learned counsels for the parties and perused the records.

6. It is apposite to reproduce here Section 311 of Cr.P.C, which runs as under:-

“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.”

7. In the case of **Mannan S.K. and Ors. (Supra)**, the Apex Court has held in paragraph-10 as under:-

“10. The aim of every court is to discover truth. Section 311 of the Code is one of many such provisions of the Code which strengthen the arms of a court in its effort to ferret out the truth by procedure sanctioned by law. It is couched in very wide terms. It empowers the court at any stage of any inquiry, trial or other proceedings under the Code to summon any person as a witness or examine any person in attendance, though not summoned as witness or recall and re-examine already examined witness. The second part of the Section uses the word ‘shall’. It says that the court shall summon and examine or recall or re-examine any such person if his evidence appears to it to be essential to the just decision of the case. The words ‘essential to the just decision of the case’ are the key words. The court must form an opinion that for the just decision of the case recall or re-examination of the witness is necessary. Since the power is wide it’s exercise has to be done with circumspection. It is trite that wider the power greater is the responsibility on the courts which exercise it. The exercise of this power cannot be untrammelled and arbitrary but must be only guided by the object of arriving at a just decision of the case. It should not cause prejudice to the accused. It should not permit the prosecution

to fill-up the lacuna. Whether recall of a witness is for filling-up of a lacuna or it is for just decision of a case depends on facts and circumstances of each case. In all cases it is likely to be argued that the prosecution is trying to fill-up a lacuna because the line of demarcation is thin. It is for the court to consider all the circumstances and decide whether the prayer for recall is genuine.”

8. The Hon’ble Supreme Court in the case of ***Varsha Garg V The State of Madhya Pradesh & Ors [2022 LiveLaw (SC) 662]*** has held as under:-

“40. The right of the accused to a fair trial is constitutionally protected under Article 21. However, in Mina Lalita Baruwa (supra), while reiterating Rajendra Prasad (supra), the Court observed that it is the duty of the criminal court to allow the prosecution to correct an error in interest of justice. In Rajendra Prasad (supra), the Court had held that:

“8. Lacuna in the prosecution must be understood as the inherent weakness or a latent wedge in the matrix of the prosecution case. The advantage of it should normally go to the accused in the trial of the case, but an oversight in the management of the prosecution cannot be treated as irreparable lacuna. No party in a trial can be foreclosed from correcting errors. 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. After all, function of the criminal court is administration of criminal justice and not to count errors committed by the parties or to find out and declare who among the parties performed better.”

9. In the instant case, it is not disputed that documents, Annexure-P/3 & P/4, are already annexed with the case. It also appears from the

impugned order that name of both the witnesses was already mentioned in the witness list but the prosecution has closed its evidence without examining the aforesaid witnesses. As provided under Section 311 of Cr.P.C., the 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 earlier, if his evidence appears to be essential to the just decision of the case.

10. The empowering of the Trial Court with very wide range power to take additional evidence at any stage of inquiry or trial u/S 311 of Cr.P.C. is not merely because the additional evidence must be necessary to pronounce judgement but there would be a failure of justice without it. Similarly, in the instant case, it is evident that Annexure-P/3 & P/4 are report on comparison of photographs and handwriting examination report which are issued by Rakesh Bisht, Senior Scientific Officer Photo and Scientific Aids Division CFSL, CBI, New Delhi and Anil Sharma Senior Scientific Officer (Document) cum Assistant Chemical Examiner to the Government of India, CFSL, CBI, New Delhi respectively. The prosecution case substantially depends upon those documents, therefore, without examination of both the aforesaid witnesses, it would be impossible to pass a just decision. Non-examination of the same would render failure of justice.

11. In view of foregoing discussion, this Court is of the considered opinion that learned Trial Court has rightly allowed the application u/S 311 of Cr.P.C. There is no illegality, perversity or irregularity in the findings recorded by the learned Trial Court.

12. Accordingly, this petition filed u/S 482 of Cr.P.C. is hereby **dismissed**. The interlocutory application(s), if any, also stands disposed of.

(S. A. DHARMADHIKARI)
JUDGE

(PRAKASH CHANDRA GUPTA)
JUDGE

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