

**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 14th OF FEBRUARY, 2023

MISC. CRIMINAL CASE No. 3955 of 2023

BETWEEN:-

**ANKIT KOTHARI S/O DILIP KOTHARI
AGED ABOUT 29 YEARS, OCCUPATION: STUDENT
R/O VIJAYPUR
DISTRICT SHEOPUR (MADHYA PRADESH)**

.....PETITIONER

(SHRI AKASH RATHI, ADVOCATE)

AND

**THE STATE OF MADHYA PRADESH
STATION HOUSE OFFICER
THROUGH POLICE STATION SANYOGITAGANJ
INDORE (MADHYA PRADESH)**

.....RESPONDENT/STATE

(SHRI ANAND SONI, ADDITIONAL ADVOCATE GENERAL)

This petition coming on for orders this day, Hon'ble Shri Prakash

Chandra Gupta pronounced the following:

ORDER

With the consent of learned counsel for both the parties, the matter has been heard finally.

The present petition u/S 482 of the Code of Criminal

Procedure, 1973 (in short “Cr.P.C.”), has been filed seeking quashment of order dated 16.01.2023 passed by the 1st Additional Sessions Judge and Special Judge, Vyapam, Indore (M.P.) in Session Trial No.714/2014, whereby, the learned Trial Court has rejected an application u/S 311 of Cr.P.C. filed by the petitioner and others.

2. Sessions Trial No.714/2014 is pending before the learned Trial Court for the offence u/S 419, 420, 467, 468, 471 and 120 B of the Indian Penal Code, 1860 (in short “IPC”) and Section 3/4 of the Madhya Pradesh Recognized Examinations Act against the petitioner and others, and the aforesaid sessions trial was fixed on 24.01.2023 for defence evidence.

3. On 05.01.2023, the petitioner Ankit Kothari and co-accused persons, Dilip and Devendra had filed an application u/S 311 of Cr.P.C. stating that earlier Shri Ranjan Sharma, Advocate had represented the co-accused Jitendra Kain and subsequently he was appointed as special public prosecutor in the matter and representing the State in the aforesaid sessions trial. A writ petition No.7086/2022 was filed before this High Court for challenging the appointment of Shri Ranjan Sharma, Advocate as special public prosecutor to represent the State in the same matter in which earlier he was representing one of the accused, but when this fact came to the knowledge of Shri Ranjan Sharma, Advocate, he gave resignation from the post of special public prosecutor.

4. The petitioner further alleged that Shri Ranjan Sharma, Advocate

as a special public prosecutor has examined prosecution witness, PW/8 – last prosecution witness. The possibility cannot be ruled out that Shri Ranjan Sharma, Advocate has asked questions to the prosecution witnesses, which might be favourable to his client/accused earlier to whom he was representing, and there are higher chance that he had asked the questions which are against other co-accused persons which is against the principle of natural justice and settled principles of law. The aforementioned witnesses have been cross-examined earlier by Shri Ranjan Sharma, Advocate on behalf of the co-accused Jitendra Kain, and it seems that he had asked questions to the prosecution witnesses, which are more favourable to co-accused Jitendra Kain, hence, the bias cannot be ruled out, therefore further examination of witnesses is necessary to bring out the truth, hence, in the interest of justice PW 8 to last prosecution witness may kindly be called for further cross-examination.

5. The petitioner, alongwith this petition has not filed copy of reply of the application u/S 311 of Cr.P.C., filed by the respondent/State before the learned Trial Court, but it is mentioned in the impugned order that the respondent/State has filed reply of application u/S 311 of Cr.P.C. and objected that the accused persons were well aware of the fact that Shri Ranjan Sharma, Advocate has been working as special public prosecutor, despite no objection was made before the learned Trial Court. Hearing of case is at final stage and the accused persons have filed the application to cause delay in early disposal of the case.

6. From perusal of the impugned order, it appears that an objection

was filed before the learned Trial Court in respect of appointment of Shri Ranjan Sharma, Advocate as special public prosecutor which was decided by the learned Trial Court on 09.03.2022. Learned Trial Court while passing the impugned order has observed that the accused persons had knowledge that Shri Ranjan Sharma, Advocate was representing the State as special public prosecutor, but at the time of examination of witnesses, they had not raised any objection before the Trial Court. During trial, the accused persons had cross-examined the witnesses at length but at the time of examination of the witnesses, they had also not objected, therefore, it does not appear that the accused persons have been subject to prejudice. Accordingly, learned Trial Court has rejected the application u/S 311 of Cr.P.C.

7. We have heard learned counsel for both the parties at length and perused the case.

8. 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.”

9. From plain reading of aforementioned provision, it is crystal clear

that the Court has been vested with power to summon any person as a witness at any stage, be it inquiry trial or other proceeding. This power is given to ensure justice by bringing up the best evidences on record before the Court for just decision.

10. The Hon'ble Supreme Court in the case of ***Rajaram Prasad Yadav v. State of Bihar and Anr., [(2013) 14 SCC 461]*** has held as under :-

“16. Again, in an unreported decision rendered by this Court dated 8-5-2013 in Natasha Singh v. CBI, Criminal Appeal No.709 of 2013, where one of us was a party, various other decisions of this Court were referred to and the position has been stated as under in paras 15 and 16:

“15. 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. An opportunity of rebuttal however, must be given to the other party.

The power conferred 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 great caution and circumspection.

The very use of words such as 'any court', 'at any stage', or 'or any enquiry, trial or other proceedings', 'any person' and 'any such person' clearly spells out that the provisions of this section have been expressed in the widest possible terms, and do not limit the discretion of the court in any way. There is thus no escape if the fresh evidence to be obtained is essential to the just decision of the case. The determinative factor should therefore be, whether the summoning/recalling of the said witness is in fact, essential to the just decision of the case.

16. Fair trial is the main object of criminal procedure, and it is the duty of the court to ensure that such fairness is not hampered or threatened in any manner. Fair trial entails the interests of the accused, the victim and of the society, and therefore, fair trial includes the grant of fair and proper opportunities to the person concerned, and the same must be ensured as this is a constitutional, as well as a human right. Thus, under no circumstances can a person's right to fair trial be jeopardised. Adducing evidence in support of the defence is a valuable right. Denial of such right would amount to the denial of a fair trial. Thus, it is essential that the rules of procedure that have been designed to ensure justice are scrupulously followed, and the court must be zealous in ensuring that there is no breach of the same."

11. In the present case, the petitioner has filed the application u/S 311 of Cr.P.C. only on the ground of possibility that Shri Ranjan Sharma,

Advocate has cross-examined the prosecution witnesses on behalf of accused Jitendra Kain, which might be favourable to his client co-accused Jitendra Kain and there are high chances that he had asked the questions which are against the other co-accused persons. It is not disputed by the respondent/State that Shri Ranjan Sharma, Advocate, earlier was representing the co-accused Jitendra Kain and subsequently he was appointed as special public prosecutor and has represented the respondent/State. No doubt, it is grave professional misconduct on the part of Shri Ranjan Sharma, Advocate and in this respect, parties can file complaint against him before the appropriate forum, but only on the ground of alleged possibility that the witnesses, who have already been examined before the learned Trial Court, cannot be recalled for further cross-examination.

12. It is also apparent that prosecution witnesses No.8 to last witness have been examined before the learned Trial Court but the petitioner has not raised any objection in this regard before the learned Trial Court. The petitioner has also not clarified in the application u/S 311 of Cr.P.C. that what questions should be asked by Shri Ranjan Sharma, Advocate from the witnesses and he has not asked the same. It is also not clarified that Shri Ranjan Sharma, Advocate asked any question to the witnesses which could have caused prejudice to the petitioner. Hence, only on the ground of alleged possibility, the prosecution witnesses cannot be recalled for further cross-examination.

13. In view of foregoing discussion, this Court is of the considered

opinion that learned Trial Court has rightly rejected the application u/S 311 of Cr.P.C. There is no perversity or illegality in the findings recorded by the learned Trial Court.

14. Accordingly the 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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