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

**BEFORE
HON'BLE SHRI JUSTICE PRAKASH CHANDRA GUPTA**

ON THE 25th OF JANUARY, 2024

MISC. CRIMINAL CASE No. 54173 of 2023

BETWEEN:-

**ARVIND S/O SHRI MADAN, AGED 26 YEARS,
OCCUPATION: LABOUR R/O GRAM DEDLA (MADHYA
PRADESH)**

.....APPLICANT

(BY SHRI ANJUM PAREKH - ADVOCATE)

AND

**THE STATE OF MADHYA PRADESH PS MANAWAR
(MADHYA PRADESH)**

.....RESPONDENT/STATE

(BY SHRI RAHUL SOLANKI - GOVT. ADVOCATE)

*This application coming on for admission this day, the court passed the
following:*

ORDER

This petition u/S 482 of Code of Criminal Procedure, 1973, has been filed by the applicant/accused being aggrieved by order dated 08.11.2023 passed by II Additional Sessions Judge, Manawar, Distt. - Dhar (M.P.) in ST No.67/2022, whereby the learned trial Court has dismissed the application u/S 311 of Cr.P.C. filed by applicant.

2. Facts giving rise to this petition are that S.T. No.67/2022, offence punishable u/S 294, 323, 324, 506(II) and 302 r/w 34 of IPC and Section 25(i) (b)(b) of the Arms Act is pending before the trial Court against the applicant. During prosecution evidence, Pradeep (PW-1) and Lakshmibai (PW-3) were

examined on 16.02.2023 and 29.03.2023 respectively. Thereafter, on 20.09.2023, the applicant had filed an application (Annexure-6) u/S 311 of Cr.P.C., which was rejected by the learned trial Court.

3. Learned counsel for the applicant submits that previous counsel for the applicant could not perform effective cross-examination of the witnesses Pradeep (PW-1) and Lakshmbai (PW-3) in respect of sequence of incident of reaching police station from the place of incident, from police station to Manawar Hospital, refer of the injured/deceased from Manawar to Badhwani Hospital and admit over there, date of death during treatment, alongwith on other subjects i.e., nature of injury of injured person and animosity between the parties.

4. It is also submitted that for just disposal of the matter, the aforementioned facts must be cross-examined from the witnesses wherein the learned trial Court has failed by rejecting the application without considering the same. Therefore, it is prayed that the impugned order be set aside. Learned counsel has placed reliance in the cases of ***Dinesh V State of M.P.* [1995 (II) MPWN 73]**; ***Uday Singh V State of M.P.* [2004 (I) MPWN 140]** and ***Dinesh V State of M.P.* [1991 (I) MPWN 14]**.

5. Learned counsel for the State/respondent has vehemently opposed the prayer advanced by the learned counsel for the applicant and submitted that both the prosecution witnesses have been elaborately cross-examined by the previous defence counsel. This petition has been filed just to cause inordinate delay. Therefore, the petition deserves to be dismissed.

6. I have heard learned counsels for both the parties at length and perused the record.

7. 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.”

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

9. In the case of *Dinesh Kumar (Supra)*, Coordinate Bench of this Court had observed that discretion to recall witness should be exercise judiciously, wherein witnesses could not be effectively cross examined by junior counsel therefore, witness should be recalled. In the case of *Uday Singh (Supra)*, it has been observed by Coordinate Bench of this Court that important circumstance left in cross-examination, hence, prosecution witness should be recalled for cross-examination and power should be exercised for just decision of the case. In the case of *Dinesh Kumar (Supra)*, Coordinate Bench of this Court has held that S.311 of Cr.P.C., is in two parts, former is discretionary while latter is mandatory. Presence of eye-witness is disputed, hence, witness should be called for further cross-examination.

10. The Apex court in the case of *Rajaram Prasad Yadav v. State of Bihar*, [(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. CBI12, 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: (SCC pp. 748-49)

"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 of Cr.P.C. 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 case of ***State Of Haryana vs Ram Mehar And Others*** [2016

(4) RCR criminal 154], Hon'ble Supreme Court has opined as under:-

"37. There is a definite purpose in referring to the aforesaid authorities. We are absolutely conscious about the factual matrix in the said cases. The observations were made in the context where examination-in-chief was deferred for quite a long time and the procrastination ruled as the Monarch. Our reference to the said authorities should not be construed to mean that Section 311 CrPC should not be allowed to have its full play. But, a prominent one, the courts cannot ignore the factual score. Recalling of witnesses as envisaged under the said statutory provision on the grounds that accused persons are in custody, the prosecution was allowed to recall some of its witnesses earlier, the counsel was ill and magnanimity commands fairness should be shown, we are inclined to think, are not acceptable in the obtaining factual matrix. The decisions which have used the words that the court should be magnanimous, needless to give special emphasis, did not mean to convey individual generosity or magnanimity which is founded on any kind of fanciful notion. It has to be applied on the basis of judicially established and accepted principles. The approach may be liberal but that does not necessarily mean "the liberal approach" shall be the rule and all other parameters shall become exceptions. Recall of some witnesses by the prosecution at one point of time, can never be ground to entertain a petition by the defence though no acceptable ground is made out. It is not an arithmetical distribution. This kind of reasoning can be dangerous. In the case at hand, the prosecution had examined all the witnesses. The statements of all the accused persons, that is 148 in number, had been recorded under Section 313 CrPC. The defence had examined 15 witnesses. The foundation for recall, as is evincible from the applications filed, does not even remotely make out a case that such recalling is necessary for just decision of the case or to arrive at the truth. The singular ground which prominently comes to surface is that the earlier counsel who was engaged by the defence had not put some questions and failed to put some questions and give certain suggestions. It has come on record

that number of lawyers were engaged by the defence. The accused persons had engaged counsel of their choice. In such a situation recalling of witnesses indubitably cannot form the foundation. If it is accepted as a ground, there would be possibility of a retrial. There may be an occasion when such a ground may weigh with the court, but definitely the instant case does not arouse the judicial conscience within the established norms of Section 311 CrPC for exercise of such jurisdiction. It is noticeable that the High Court has been persuaded by the submission that recalling of witnesses and their cross-examination would not take much time and that apart, the cross-examination could be restricted to certain aspects. In this regard, we are obliged to observe that the High Court has failed to appreciate that the witnesses have been sought to be recalled for further cross-examination to elicit certain facts for establishing certain discrepancies; and also to be given certain suggestions. We are disposed to think that this kind of plea in a case of this nature and at this stage could not have been allowed to be entertained.”

12. In the instant case, the learned trial Court had observed that detailed cross-examination has been conducted by the previous defence counsel for the applicant/accused. Previous defence counsel was appointed by the accused himself. It does not appear that the cross-examination conducted by the previous counsel was ineffective. Accordingly, the trial Court has rejected the application u/S 311 of Cr.P.C.

13. On perusal of the copy of deposition of both the witnesses, it appears that previous counsel for the applicant/accused had cross examined both the witnesses effectively and elaborately. Learned counsel for the applicant has failed to show just cause to recall the witnesses for further cross-examination, which has been made an essential in several case laws as discussed above. Therefore, it appears that the learned trial Court has rightly rejected the application u/S 311 of Cr.P.C. The impugned order does not suffer from any illegality, irregularity or perversity. Case laws cited by the learned

counsel for the applicant are not applicable in the instant case as they stand on different footing.

14. Accordingly, the impugned order is hereby affirmed and the petition, being sans-merits, is hereby **dismissed**.

(PRAKASH CHANDRA GUPTA)
JUDGE

Shruti

