



1

CRR-4247-2024

IN THE HIGH COURT OF MADHYA PRADESH
AT INDORE

BEFORE

HON'BLE SHRI JUSTICE VIVEK RUSIA

ON THE 4th OF SEPTEMBER, 2024CRIMINAL REVISION No. 4247 of 2024*MANJU**Versus**THE STATE OF MADHYA PRADESH*

.....
Appearance:

Shri Syed Asif Ali Warsi - Advocate for the petitioner.

*Shri Rajwardhan Gawde - Government Advocate for the
respondent/State.*

.....

ORDER

The petitioner has filed this present petition under Section 397 r/w 401 of the Code of Criminal Procedure [Section 438 r/w 442 of the Bhartiya Nagarik Surksha Sanhita (BNSS), 2023] being aggrieved by the order dated 12.08.2024 whereby the application filed by the prosecution under Section 348 of the BNSS, 2023 has been allowed by the trial Court.

2. The petitioner is facing session trial under Section 302 of the Indian Penal Code and Section 25 and 27 of the Arms Act which is pending before the 6th Additional Sessions Judge, District Shajapur (MP). The final argument of the case were heard on 12.07.2024 and the trial was fixed for pronouncement of judgment on 20.07.2024. The prosecution filed an application under Section 348 of the BNSS, 2023 seeking permission to recall the witness Dr. Sunil Kumar Soni (PW-21) and the Investigation



Officer K.L.Dangi (PW-22) in order to exhibit the medical documents as well as FSL report which are already part of the charge-sheet. The application was opposed by the petitioner on the ground that all these documents were part of the charge-sheet and available at the time of examination of PW-21 and PW-22 but the prosecution for reasons best known to them did not exhibit the same and now lacuna cannot be fulfilled by recalling them. The learned Session Court allowed the application for re-examination of Dr. Sunil Kumar Jain for exhibiting the documents in respect of treatment of the deceased from 01.01.2019 to 06.01.2019 and re-examination of Investigation Officer K.L.Dangi. Hence, this petition before this Court.

3. Apart from the grounds raised before the trial Court, learned counsel for the petitioner submits that once the trial is terminated, the learned Judge cannot consider the application under Section 311 of the Cr.P.C. (Section 348 of the BNSS) for summoning the witness for examination or re-examination. In support of his contention, learned counsel for the petitioner has placed passed by the Coordinate Bench of this Court (Gwalior) in case of *Imrat Singh & Ors. vs. State of M.P., 2015 Cri.L.J. 3473*. In the aforesaid judgment, the Coordinate Bench has considered the provisions of Sections 311 and 353 of the Cr.P.C and held that under Section 353 of the Cr.P.C., the judgment is pronounced immediately after termination of trial. Therefore, once the trial is terminated the application under Section 311 cannot be allowed. In the present case, the trial was fixed for judgment on 20.07.2024. Therefore, the learned Session Judge has wrongly allowed the application.



4. The Apex Court had occasion to consider the power of Court under Section 311 of the Cr.P.C. in the case of *P.Chhaganlal Daga vs. M.Sanjay Shaw., (2003) 11 SCC 486* and held that the power to receive evidence in exercise of Section 311 of the Code could be exercised "even if evidence on both sides is closed" and such jurisdiction of the Court is dictated by the exigency of the situation and fair play. The only factor which should govern the court in exercise of powers under Section 311 should be whether such material is essential for the just decision of the case. Thereafter, recently in case of *Satbir Singh vs. State of Haryana & Ors., 2023 SCC Online 1086*, the Apex Court, after considering all the earlier judgments, came to the conclusion that Section 311 of the Cr.P.C. should be invoked when it is essential for the just decision of the case and to meet the ends of justice. The Court has wide power under Section 311 even recall the witnesses for re-examination or further examination necessary in the interest of justice after taking into consideration the facts and circumstances of each case. Recently, the coordinate Bench of this Court has also considered in the issue in case of *Shankarlal & Anr. vs. State of M.P., ILR 2023 MP 1052*.

5. So far as the contention of learned counsel for the petitioner that the trial Court is concluded as it is fixed for pronouncement of judgment. The five judges Bench of the Apex Court in case of *Sukhpal Singh Khaira vs. State of Punjab, (2023) 1 SCC 289* has categorically held that even after pronouncement of the judgment the trial is not completed since the learned Session Judge is required to apply her/his mind to the evidence which is available on record to determine the gravity of the charge for which the



accused is found guilty to award an appropriate sentence.

6. In the light of the above pronouncement of law as laid down by Apex Court, the judgment relied upon by the learned counsel for the petitioner in case of *Imrat Singh (supra)* does not give benefit to the petitioner. In the present case which is a murder trial, the learned trial Court found that due to inadvertence, the document explaining injuries to the deceased could not be exhibited. Deceased remained under treatment for six days in the MY Hospital. The documents were seized by the police and were available in the list of documents filed along with the charge-sheet. Therefore, the evidence of doctor is necessary by way of re-examination. The trial Court has rightly held that the evidence of Investigation Officer K.L.Dangi (PW-22) is also necessary in order to prove the MSL report as well as '*roj namcha sanha*'.

7. We do not find any error in the order impugned calling for interference and accordingly, the present petition is dismissed.

(VIVEK RUSIA)
JUDGE