

**IN THE HIGH COURT OF MADHYA PRADESH**

**AT INDORE**

**BEFORE**

**HON'BLE SHRI JUSTICE PRANAY VERMA**

**ON THE 22<sup>nd</sup> OF JANUARY, 2024**

**MISC. CRIMINAL CASE No. 1350 of 2024**

**BETWEEN:-**

**TEJPALSINGH S/O GHANSHYAMSINGH, AGED ABOUT 27 YEARS, OCCUPATION: AGRICULTURE, R/O. GRAM ILIYASKHEDI, BHERUGARH, DISTRICT UJJAIN (MADHYA PRADESH)**

**.....PETITIONER**

***(BY SHRI SANJAY KUMAR SHARMA - ADVOCATE)***

**AND**

**THE STATE OF MADHYA PRADESH STATION HOUSE OFFICER BHERUGARH UJJAIN (MADHYA PRADESH)**

**.....RESPONDENT**

***(BY SHRI ANENDRA SINGH PARIHAR - P.L. FOR STATE)***

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

**ORDER**

1. With consent heard finally.
2. By this petition preferred under Section 482 of the Code of Criminal Procedure the petitioner/accused has challenged the order dated 29/11/2023 passed by the IIIrd Additional Sessions Judge, Ujjain in Sessions Trial No.2021/2022 whereby it has rejected an application under Section 311 of the Cr.P.C filed by him for re-recording the statement of the complainant Tejpal and injured Muskan before the Court.
3. The facts in brief are that an FIR was lodged by the complainant to the

effect that about six months ago he had sold 33 bighas of land to co-accused Sonu Maharaj for a consideration of Rs.4.00 Crores. Against the transaction an amount of Rs.3,10,000/- only was paid. On 4/6/2022 at 2.30 PM when the complainant along with his wife Muskan, brother Mahipal and grand-mother Bhavan Kunwar were at the house build on their field, the accused persons including the petitioner came with a JCB machine and broke the boundary gate. Co-accused Sonu told them to vacate the field else they would put the complainant party to death. Thereafter there was altercation between both the parties and on direction of co-accused Sonu, co-accused Tarun put a Katta near the head of the complainant while the other co-accused caught hold of Mahipal and thereafter they directed the JCB operator to demolish the house. In the incident co-accused Sonu Maharaj pushed Bhagwan Kunwar on the field and kicked Muskan in her abdomen and sprinkled kerosene oil on her and set her on fire. Accused persons then left the place after threatening the complainant party with life.

4. On lodging of the FIR, investigation was commenced by the police during course of which statements of witnesses were recorded and the accused were arrested. After completion of the investigation charge sheet was filed against the accused and the trial is pending before the trial Court.

5. During course of proceedings before the trial Court, statements of complainant Tejpal and injured Muskan, wife of Tejpal were recorded before the Court in which they did not support the prosecution case and were declared hostile. Thereafter on 13/10/2023 an application under Section 311 of the Cr.P.C was filed by the complainant and injured Muskan for permitting them to re-record their evidence before the Court submitting that the accused are influential persons and had given inducement and had exercised pressure upon them stating that they shall get sale deed of the land in dispute executed in favour of one Ghanshyam. An agreement was also executed between the

parties in that regard. It is as a result of such inducement that the complainant and injured Muskan had turned hostile before the trial Court but thereafter the accused got sale deed executed only of part of the land and not in entirety. Even after recording of their statements the accused are not executing the sale deed hence they want to bring the real factual position before the Court and want their statements to be re-recorded.

6. The application has been rejected by the trial Court by the impugned order by holding that merely because as per the compromise entered into between the parties the sale deed was not executed by the accused, it would not be expedient to recall the complainant and injured Muskan for re-recording of their statements.

7. Learned counsel for the petitioner has placed reliance upon the decision of the High Court of Punjab and Haryana at Chandigarh in CRM-M-42890-2022 (O & M) Surjit Singh V/s. State of Punjab & Ors. decided on 26/5/2023 to submit that in view of the facts stated by the petitioner in his application the same ought to have been allowed. The learned counsel for the respondent has supported the impugned order submitting that there is no infirmity in the same.

8. Heard the learned counsel for the parties and perused the record.

9. In Surjit Singh (Supra) it has been laid down as under :-

“11 ....The touchstone for exercise of powers under [Section 311](#) of the Code, is the satisfaction of the Court that the evidence of any person, which comes to its notice, is essential for the just decision of the case. This power, under [Section 311](#) of the Code, can be exercised by the court at any stage of any inquiry, trial or other proceedings under the Code, to summon any person as witness, examine any person in attendance, though not summoned as a witness or recall or re-examine any person already examined. The intention of the Legislature is to empower and enable the court to come to a correct finding and for that reason, the court would be fully justified in permitting production of evidence, whether documentary or oral, where the court feels that the same is necessary for the just decision of the case. No fetters can be put in exercise of these powers of the court. The cause of justice is paramount and no impediment has, therefore, been intentionally put on the court by the Legislature to exercise the powers under [Section 311](#) of the Code.

Furthermore, in *Zahira Habibulla H. Sheikh and anr. v. State of Gujarat and ors* 2004 (2) RCR (Crl.) 836, the Supreme Court described the scope of [Section 311](#) of the Code as under:-

"Object of the Section is to enable the court to arrive at the truth irrespective of the fact that the prosecution or the defence has failed to produce some evidence which is necessary for a just and proper disposal of the case. The power is exercised and the evidence is examined neither to help the prosecution nor the defence, if the court feels that there is necessity to act in terms of [Section 311](#) but only to subserve the cause of justice and public interest. It is done with an object of getting the evidence in aid of a just decision and to uphold the truth."

**12.** An argument has been by Mr. R.S. Cheema, Senior Counsel appearing on behalf of the petitioners, that there was no threat or coercion at the time the statement was given in the Court and since no case was made out, the prosecutrix and her parents rightly resiled from their statements given under [Section 164](#) of the Code and they did not support the prosecution. It is argued that in case the application under [section 311](#) of the Code is allowed, it would encourage persons to back out from statements recorded and make a mockery of the trial. This argument is without any merit. If a compromise was entered into as set up by the complainant, it can be said that it was an allurements to have the criminal prosecution dropped against the accused. This can be deduced from the reading of the compromise which has been placed on the record, where it is stated that both parties would make an effort to get Ashish Kumar released from the custody. This compromise was effected by the parents of Ashish Kumar and the prosecutrix. Without going into the question whether the compromise was in violation of the law or not, it would not be out of place to mention that parents in our Indian social structure would make all endeavor to restore the reputation of their daughters in society by arranging her marriage with the same person accused of such offence. In fact, if the terms of the compromise had been adhered to, the petitioners would have benefitted as well, since they were to be released from custody and the prosecutrix and family members would not have instituted the instant application seeking reexamination.

**13.** In para 41 of judgment rendered in *Zahira Habibulla H Sheikh's case* (supra), it has been held:

"Witnesses" as Bentham said: are the eyes and ears of justice. Hence, the importance and primacy of the quality of trial process. If the witness himself is incapacitated from acting as eyes and ears of justice, the trial gets putrefied and paralysed, and it no longer can constitute a fair trial. The incapacitation may be due to several factors like the witness being not in a position for reasons beyond control to speak the truth in the Court or due to negligence or ignorance or some corrupt collusion. Time has become ripe to act on account of numerous experiences faced by Courts on account of frequent turning of witnesses as hostile, either due to threats, coercion, lures and

monetary considerations at the instance of those in power, their henchmen and hirelings, political clouts and patronage and innumerable other corrupt practices ingenuously adopted to smother and stifle truth and realities coming out to surface rendering truth and justice, to become ultimate casualties. Broader public and societal interests require that the victims of the crime who are not ordinarily parties to prosecution and the interests of State represented by their prosecuting agencies do not suffer even in slow process but irreversibly and irretrievably, which if allowed would undermine and destroy public confidence in the administration of justice, which may ultimately pave way for anarchy, oppression and injustice resulting in complete breakdown and collapse of the edifice of rule of law, enshrined and jealously guarded and protected by the Constitution. There comes the need for protecting the witness. Time has come when serious and undiluted thoughts are to be bestowed for protecting witnesses so that ultimate truth is presented before the Court and justice triumphs and that the trial is not reduced to mockery. The State has a definite role to play in protecting the witnesses, to start with at least in sensitive cases involving those in power, who has political patronage and could wield muscle and money power, to avert trial getting tainted and derailed and truth becoming a casualty. As a protector of its citizens it has to ensure that during a trial in Court the witness could safely depose truth without any fear of being haunted by those against whom he has deposed. Some legislative enactments like the [Terrorist and Disruptive Activities \(Prevention\) Act, 1987](#) (in short the '[TADA Act](#)') have taken note of the reluctance shown by witnesses to depose against dangerous criminals- terrorists. In a milder form also the reluctance and the hesitation of witnesses to depose against people with muscle power, money power or political power has become the order of the day. If ultimately truth is to be arrived at, the eyes and ears of justice have to be protected so that the interests of justice do not get incapacitated in the sense of making the proceedings before Courts mere mock trials as are usually seen in movies."

It was further held that. "It is not that in every case where the witness who had given evidence before Court wants to change his mind and is prepared to speak differently, that the Court concerned should readily accede to such request by lending its assistance. If the witness who deposed one way earlier comes before the appellate Court with a prayer that he is prepared to give evidence which is materially different from what he has given earlier at the trial with the reasons for the earlier lapse, the Court can consider the genuineness of the prayer in the context as to whether the party concerned had a fair opportunity to speak the truth earlier and in an appropriate case accept it. It is not that the power is to be exercised in a routine manner, but being an exception to the ordinary rule of disposal of appeal on the basis of records received in exceptional cases or extraordinary situation the Court can neither feel powerless nor abdicate its duty to arrive at the truth and satisfy the ends of justice. The Court can

certainly be guided by the metaphor, separate the grain from the chaff, and in a case which has telltale imprint of reasonableness and genuineness in the prayer, the same has to be accepted, at least to consider the worth, credibility and the acceptability of the same on merits of the material sought to be brought in."

19. An onerous duty that has been cast upon the courts is to ensure fair trial and to arrive at the truth. All the judgments as cited above, clearly delineate that there is no limit on discretion of court to recall and reexamined witness, even if the witness who deposed one way before the court now wants to depose and is prepared to give evidence which is clearly different from what had been stated earlier. Allowing witnesses to be recalled would be in consonance with the cardinal principle that the truth must prevail. To ensure fair trial, the court can consider the request and allow such witness to be called for re-examination. The second part of Section 311 of the Code also clearly states that the Court 'shall' summon and examine or recall and re-examine any such person if his evidence appears to it to be essential for the just decision of the case. The court has to be satisfied that such application is not a frivolous or vexatious application, only to delay the trial or fill up any lacunas in the trial."

10. I am in complete agreement with the enunciation of law as made in the aforesaid decision and see no reason to take a different view. When the facts of the present case are seen in the light of the aforesaid dictum, it is apparent that the complainant has categorically stated in his application that earlier the accused had exercised pressure upon him and injured Muskan and had lured them into entering into a compromise with them and had stated that they shall get sale deed with respect to the land of which dispute is pending between the parties executed in favour of a third person. They had also got a compromise document executed from them in that regard. It is on the basis of the said compromise that statement was given by the complainant and injured Muskan in favour of the accused by turning hostile before the trial Court. However, subsequently the accused got sale deed of only a small part of the land executed and thereafter did not get any sale deed executed of the remaining land.

11. Thus, specific stand of complainant is that he and injured Muskan earlier deposed one way before the trial Court but now want to depose

otherwise and are prepared to give their evidence which is clearly different from what had been stated by them earlier. They want to bring the truth before the trial Court. Allowing them to be recalled in evidence would be in consonance with the cardinal principle that truth must prevail. This is particularly so when complainant and injured Muskan categorically state that they had earlier turned hostile due to threat, coercion and allurements and monetary consideration at the instance of the accused which was intended to smother and stifle truth and reality. Permitting their re-examination would be fulfilling the intention of the legislature in enacting Section 311 of the Cr.P.C which is to empower and enable the Court to come to a correct finding. For that reason, it would be fully justifiable in permitting re-examination since the same would be necessary for the just decision of the case.

**12.** It would be pertinent to mention that re-examination of the complainant and injured Muskan would not amount to filling up of lacuna in the prosecution case and would also not cause any prejudice to the accused since they would be having full opportunity to cross examine the recalled witnesses and even otherwise the earlier statements made by the witnesses are not going to be erased and wiped out from the record of the case. The trial Court would decide the case on the basis of evidence already on record and the additional evidence which would be recorded on re-examination of the petitioner and injured Muskan as prosecution witnesses. While finally deciding the case on merits, the trial Court would take into consideration all the evidence available on record.

**13.** As a result of the aforesaid discussion, the impugned order passed by the trial Court cannot stand scrutiny and is therefore, set aside. The application under Section 311 of the Cr.P.C filed by the petitioner stands allowed.

14. The petition is accordingly allowed and disposed off.

**(PRANAY VERMA)**

**JUDGE**

SS/-