

**HIGH COURT OF MADHYA PRADESH AT JABALPUR**

**M.Cr.C. No. 21551/2016**

**Ajay Patle**

**Vs.**

**State of Madhya Pradesh**

**[Single Bench : Hon'ble Smt. Anjali Palo, Judge]**

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Shri Vipin Yadav, learned counsel for the petitioner.

Shri K.S.Patel, PL for the respondent / State.

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**ORDER  
( 03/01/2017)**

1. This petition under Section 482 of Cr.P.C. has been filed for quashing of order dated 28.11.2016 passed in Session Trial No. 249/2012 pending before the 5<sup>th</sup> Addl. Session Judge, Jabalpur, wherein the learned Addl. Session Judge allowed the application under Section 311, for recalling the prosecution witnesses for re-examination.

2. Learned counsel for the appellant has contended that learned Trial Court in a routine manner allowed the application after completion of evidence of both parties and the matter was finally heard. Application was filed for re-examination of prosecution witness Rakesh Dubey (PW-9), Piyush Dubey, Chotelal Prajapati, Jitendra Singh Patel and Nodal Officer just to fill up the lacuna. It is submitted that the prosecution wants to rely upon electronic evidence without any certificate as required under Section 65(b)(4) of the

Evidence Act. Therefore, the petitioner prays for quashing of order dated 28.11.2016.

3. Heard both the parties. Perused the record and impugned order.

4. It is true that learned Trial Court allowed the application under Section 311 of Cr.PC at the stage of final hearing. As per provisions of section 311, the powers of Section 311 can be exercised “at any stage of trial” but, before passing of judgement. The provision can be used in the interest of justice and just and proper decision of the case. Learned Trial Court allowed the prosecution to examine and re-examine certain witnesses in the light of the law laid down by superior Courts. The trial is in progress under Section 302 of IPC against the petitioner. Some important information has been received by the prosecution witnesses through mobile phones number 7389418526 and 9589679384.

5. **In the case of State of Haryana Vs. Ram Mehar & Ors. (2016) 8 SCC 762**, Hon'ble Supreme Court has thoroughly examined the object of fair trial and considered the case laws of **Bablu Kumar Vs. State of Bihar (2015) 8 SCC 787**, **Manu Sharma Vs. State (NCT of Delhi) (2010) 6 SCC 01** and **Rattiram Vs. State of MP (2012) 4 SCC 516** in which it is held that :

*“.....Keeping in view the concept of fair trial the obligation of the prosecution, the interest of the community and duty of the court, it can irrefragably be stated that the court cannot be silent spectator or a mute observer when it presides over a trial. It is the duty of the Court to see that neither the prosecution nor the accused play truancy with the criminal trial or corrode the sanctity of the proceeding. They cannot expropriate or hijack the community interest by conducting themselves in such a manner as a consequence of which the trial becomes a farcical one.*

*“Section 311 of Cr.PC is manifestly in two parts. Whereas the word used in the first part is “may” the word used in the second part is “shall”. In consequence, the first part which is permissive gives purely discretionary authority to the criminal*

*court and enables it “at any stage of enquiry, trial or other proceedings” under the Code to act in one of the three ways and expressed in the widest possible terms and do not limit the discretion of the Court in any way. However, the very width requires a corresponding caution that the discretionary power should be invoked as the exigencies of justice required and exercised judicially with circumspection and consistently with the provisions of the Code. The second part of the section does not allow for any discretion but it binds and compels the court to take any of the aforementioned two steps if the fresh evidence to be obtained is essential to the just decision of the case.”*

6. In case of **State of Haryana Vs. Ram Mehar (2016) 8 SCC 762**, Hon'ble Supreme Court also held that :

*“Concept of fair trial cannot be limitlessly stretched having no boundaries, the orders like the present one may fall in arena of sanctuary of errors.”*

*.....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.....”*

7. In the present case, looking to the relevancy of the testimony of prosecution witnesses proposed to be recalled or re-examined by the prosecution, this Court finds that no error has been committed by the Learned Court below in exercising the power under Section 311 of Cr.PC in the interest of justice. Hence, there is no reason to interfere with the finding of the lower Court.

Accordingly, this petition is dismissed.

**(Smt. Anjali Palo)**  
**Judge**