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**IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR
BEFORE
HON'BLE SHRI JUSTICE VISHAL MISHRA
ON THE 2nd OF DECEMBER, 2022
CRIMINAL REVISION No. 3820 of 2022**

BETWEEN:-

1. **BHARAT RAI S/O SHRI MATADEEN RAI, AGED ABOUT 45 YEARS, OCCUPATION: AGRICULTURE VILLAGE POST SAGARBARA TEHSIL JATARA DISTRICT TIKAMGARH (MADHYA PRADESH)**
2. **DHARMENDRA S/O SHRI ANAND RAI, AGED ABOUT 45 YEARS, OCCUPATION: AGRICULTURE VILLAGE POST SAGARBARA TEHSIL JATARA DISTRICT TIKAMGARH (MADHYA PRADESH)**

.....APPLICANTS

(BY SHRI SANJAY KUMAR PATEL - ADVOCATE)

AND

1. **THE STATE OF MADHYA PRADESH THROUGH POLICE STATION JATARA DISTRICT TIKAMGARH (MADHYA PRADESH)**
2. **GANPAT S/O SHRI MOHAN ADIVASI, AGED ABOUT 36 YEARS, VILLAGE POST SAGARWARA TEHSIL JATARA DISTRICT TIKAMGARH (MADHYA PRADESH)**

.....RESPONDENTS

**(SHRI AMIT PANDEY - PANEL LAWYER AND SHRI SANKALP KOCHAR
FOR RESPONDENT NO.2)**

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

ORDER

The present revision has been filed under Section 397/401 of Cr.P.C. against the order dated 20.09.2022 passed by the Additional Sessions Judge, Jatara, District Tikamgarh (M.P.) rejecting the application filed by the applicant

for recalling of witnesses.

It is the case of the applicants that a complaint was presented in the subordinate court by the respondent no.2 under Sections 307, 342, 294 of the IPC and relevant provisions of Scheduled Castes and Scheduled Tribes (Atrocities) Act and he requested to register a case by submitting an application under Section 156(3) of the Cr.P.C. before the CJM. The JMFC, Jatara, District Tikkamgarh issued an order on 24.07.2015 directing for registration of an FIR and investigation into the matter. After completion of the investigation, charge-sheet was filed and charges were framed against the applicants. Trial program was fixed, the evidence of prosecution was started. After completion of the prosecution testimony when the case was at the stage of defence evidence, an application was filed by the applicants Bharat Rai and Dharmendra Rai in the sessions court on 20.09.2022 requested that the defence witnesses be summoned. The learned trial court after hearing the application allowed the same and only witnesses Ganesh Jain, Sindhupal Jain, Shailesh Jain, Mahesh Saxena and Smt. Kiran Parmar were ordered to be summoned, however the application as far as other witnesses are concerned, was rejected. The reason for rejection was shown to be that the application was silent about the circumstances for summoning the witnesses, on which context and for which documents to be exhibited they were required to be called. No clear description was given in the application. It was further observed that earlier applications have also been rejected for the similar relief. Again a similar application has been filed which is not maintainable.

It is their case that in terms of provisions of section 243(2) of the Cr.P.C. the accused is having every right to call for the witnesses in defence. By way of

application they want to call the witnesses who have investigated the matter on earlier occasion.

Per contra, counsel appearing for the State as well as the respondent no.2 have vehemently opposed the contentions and supported the impugned order pointing out the fact that the similar applications have been filed for recalling the witnesses on earlier occasions. Every possible effort has been made by the applicants to delay the proceedings. The evidence has already been closed and the matter is at the verge of final arguments before the trial court. The next date is 5th December, 2022 for final arguments.

Learned trial court has further observed that earlier applications filed for the same cause have been rejected. No new cause arises to the applicants for again filing the application claiming the similar relief. There is no explanation being given and no nexus has been shown that why the witnesses are required to be recalled. Detailed examination of the witnesses have already been done in the matter. In such circumstances, the order passed by the learned trial court is just and proper. He has further brought to the notice of this court, several orders have been passed by the learned trial court rejecting their applications for similar reliefs i.e. applications under Section 91 of Cr.P.C. rejected on 23.12.2021 and 29.01.2022. Under these circumstances, no illegality has been committed by the learned trial court.

It is further argued that on earlier occasion, the applicant has taken up the matter to the Hon'ble Supreme Court against the rejection order but that SLP has already been dismissed vide order dated 29.11.2019 being SLP Cri.No.5909/2019. It is argued that the powers under section 311 of the Cr.P.C. are discretionary powers of the court and are required to be exercised judicially and not arbitrary therefore, they have prayed for dismissal of the revision.

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

On perusal of the record, it is not disputed that the trial is at the verge of end and all witnesses have already been examined before the trial court and the evidence are closed and the matter is listed on 5th December, 2022 for final arguments. As far as application filed for recalling of the witnesses are concerned, learned trial court has considered the application and allowed for recalling of certain witnesses who were found to be important for the defence witness and as some nexus with the case in hand. As far as the application for calling of the remaining witnesses is concerned, learned trial court has categorically observed that the application is silent regarding the nexus of those witnesses with the case in hand and also that what relevant documents are required to be exhibited by them. Even the application is silent about the fact that why such witnesses are required in the matter. The investigation being carried out on earlier occasion by the witnesses has already been proved by the subsequent statements of the Inquiry Officers in the matter. Therefore, there is no need of bringing them on record.

The law with respect to recalling of the witnesses or summoning the witnesses or offence in terms of Section 311 of the Cr.P.C. reference is clear and the discretionary powers are required to be exercised judicially. Hon'ble Supreme Court in the case of **Rajaram Prasad Yadav Vs. State of Bihar and Another** reported in (2013) 14 SCC 461 as held as under :-

"14. A conspicuous reading of Section 311 Cr.P.C. would show that widest of the powers have been invested with the Courts when it comes to the question of summoning a witness or to recall or re-examine any witness already examined. A reading of the provision shows that the expression any has been used as a pre-fix to court inquiry trial other proceeding person as a witness person in attendance though not summoned as a witness, and perrson already

examined. By using the said expression any as a pre-fix to the various expressions mentioned above, it is ultimately stated that all that was required to be satisfied by the Court was only in relation to such evidence that appears to the Court to be essential for the just decision of the case. Section 138 of the Evidence Act, prescribed the order of examination of a witness in the Court. Order of re-examination is also prescribed calling for such a witness so desired for such re-examination. Therefore, a reading of Section 311 Cr.P.C. and Section 138 Evidence Act, insofar as it comes to the question of a criminal trial, the order of re-examination at the desire of any person under Section 138, will have to necessarily be in consonance with the prescription contained in Section 311 Cr.P.C. It is, therefore, imperative that the invocation of Section 311 Cr.P.C. and its application in a particular case can be ordered by the Court, only by bearing in mind the object and purport of the said provision, namely, for achieving a just decision of the case as noted by us earlier. The power vested under the said provision is made available to any Court at any stage in any inquiry or trial or other proceeding initiated under the Code for the purpose of summoning any person as a witness or for examining any person in attendance, even though not summoned as witness or to recall or re-examine any person already examined. Insofar as recalling and re-examination of any person already examined, the Court must necessarily consider and ensure that such recall and re-examination of any person, appears in the view of the Court to be essential for the just decision of the case. Therefore, the paramount requirement is just decision and for that purpose the essentiality of a person to be recalled and re-examined has to be ascertained. To put it differently, while such a widest power is invested with the Court, it is needless to state that exercise of such power should be made judicially and also with extreme care and caution."

17. From a conspectus consideration of the above decisions, while dealing with an application under Section 311 Cr.P.C. read along with Section 138 of the Evidence Act, we feel the following principles will have to be borne in mind by the Courts:

a) Whether the Court is right in thinking that the new evidence is needed by it? Whether the evidence sought to be led in under Section 311 is noted by the Court for a just decision of a case?

b) The exercise of the widest discretionary power under Section 311 Cr.P.C. should ensure that the judgment should not be rendered on inchoate, inconclusive speculative presentation of facts, as thereby the ends of justice would be defeated.

c) If evidence of any witness appears to the Court to be essential to the just decision of the case, it is the power of the Court to summon and examine or recall and re-examine any such person.

d) The exercise of power under Section 311 Cr.P.C. should be resorted to only with the object of finding out the truth or obtaining proper proof for such facts, which will lead to a just and correct decision of the case.

e) The exercise of the said power cannot be dubbed as filling in a lacuna in a prosecution case, unless the facts and circumstances of the case make it apparent that the exercise of power by the Court would result in causing serious prejudice to the accused, resulting in miscarriage of justice.

f) The wide discretionary power should be exercised judiciously and not arbitrarily.

g) The Court must satisfy itself that it was in every respect essential to examine such a witness or to recall him for further examination in order to arrive at a just decision of the case."

From the aforesaid reading, it is apparently clear that powers have to be exercised judicially and with utmost care and caution. Even otherwise, it is brought to the notice of this court that several applications seeking the similar relief have already been rejected by the courts as are pointed out hereinabove.

Under these circumstances, learned trial court has not committed any error in rejecting the application filed by the applicant. Revision *sans* merit and is accordingly **dismissed**.

No order as to costs.

Pending interlocutory application is disposed off.

(VISHAL MISHRA)
JUDGE

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