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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

MISC. CRIMINAL CASE No. 41604 of 2022

BETWEEN:-

**BHARAT RAI S/O SHRI MATADEEN RAI, AGED
ABOUT 50 YEARS, OCCUPATION: BUSINESS R/O
GRAM SAGARVARA POLICE THANA JATARA
DISTRICT TIKAMGARH (MADHYA PRADESH)**

....PETITIONER

(BY SHRI KABEER PAUL - ADVOCATE)

AND

- 1. THE STATE OF MADHYA PRADESH
THROUGH POLICE THANA JATARA
DISTRICT TIKAMGARH (MADHYA PRADESH)**
- 2. GANPAT ADIWASI S/O SHRI MOHAN
ADIWASI, AGED ABOUT 42 YEARS, R/O
GRAM SAGARVARA POLICE THANA JATARA
JILA TIKAMGARH (MADHYA PRADESH)**

....RESPONDENTS

***(SHRI AMIT PANDEY - PANEL LAWYER FOR RESPONDENT NO.1
AND SHRI SANKALP KOCHAR - ADVOCATE FOR RESPONDENT NO.2
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*This application coming on for admission this day, the court
passed the following:*

ORDER

Heard on IA No.21426 of 2022 - an application for taking
documents on record.

For the reasons mentioned in the application, the same is allowed.

The present petition under Section 482 of the Cr.P.C. has been filed by the petitioner being aggrieved by the order dated 14.06.2022 passed by the First Additional Sessions Judge, Jatara, District Tikkamgarh (M.P.) in S.T.No.19 of 2019, Police Station Jatara, District Tikkamgarh (M.P.), whereby, an application filed under Section 311 of Cr.P.C. has been rejected.

It is the case of the applicant 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 applicant. 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 under Section 311 of Cr.P.C. was filed by the applicant Bharat Rai in the sessions court on 11.06.2022 that the complainants be cross-examined against after taking into consideration the CCTV footage. The learned trial court after hearing the application has rejected the same on the ground that cross-examination of the witnesses have already been done in this regard by the accused Anand and Jitendra and it has been filed only to fill up the lacuna in the case.

It is further submitted that the pen drive has been produced before the court by the defence during the course of recording of the statements and the petitioner could not cross-examine the witnesses with respect to the pen drive. He has drawn attention of this court to the statements of witnesses which have been recorded to show that the pen drive was produced for the first time on 07.05.2022 which is reflected from the statements of the witnesses recorded on 26.05.2022. It is submitted that thereafter no opportunity of hearing was granted to cross-examine the witnesses as far as pen drive is concerned. He has further drawn attention of this court to the statement of Ganpat Aadiwasi (PW-1) wherein during cross-examination, it is stated that यदि मुझे रिकॉर्डिंग दिखाई जाये तो मैं बता सकता हू कि मैं कहां खड़ा हूँ। It is submitted that it is a valuable right of the accused persons to cross-examine the vital piece of aspect i.e. CCTV footage which was produced and exhibited in the form of a pen drive before the trial court. It is important because the petitioner was not present at the place of incident at the time of occurrence of the commission of offence. This will establish the factum of *alibi* which is the main ground of the petitioner in the entire case. If proper opportunity of hearing is not granted to the petitioner then there is every possibility that he may be convicted for life sentence in a false case which has been registered against the petitioner. Therefore, learned trial court should have been permitted him proper opportunity of hearing. He has placed reliance upon the judgments of the Hon'ble Supreme Court in the cases of **Natasha Singh Vs. Central Bureau of Investigation (State)** reported in (2013) 5 SCC

741, P.Sanjeeva Rao Vs. State of Andhra Pradesh reported in (2012) 7 SCC 56 and **Ramhet Sharma Vs. State of M.P.** reported in (2011) SCC Online MP 2504.

Per contra, learned counsel appearing for the State as well as the respondent no.2 have vehemently opposed the contentions. It is further argued that the cross-examination of the witnesses have been recorded at length which was observed by the learned trial court in the impugned order itself. He has drawn attention of this court to the impugned order wherein it is observed that cross-examination with respect to CCTV footage has already been done at length. The similar applications have already been considered and rejected on earlier occasions even CCTV footage was played and shown to them on 26.05.2022 which is clearly reflected from the impugned order. Under these circumstances, no relief can be extended. He has drawn attention of this court to several applications and orders passed by this court rejecting those applications.

The matter has already traveled up to the Hon'ble Supreme Court against the rejection order and the Hon'ble Supreme Court has dismissed the SLP (Cri.)No.5909/2019 dated 29.11.2019. The matter is listed for final arguments before the trial court. The entire evidence has already been closed. Under these circumstances, no relief can be extended and prays for dismissal of the application. Every possible effort has been made by the applicant 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.

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 cross-examining the witnesses are concerned, learned trial court has considered the application has rejected the same.

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 person 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."

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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 trial Court as are pointed out hereinabove. सत्यमेव जयते

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

No order as to costs.

Pending interlocutory application is disposed off.

(VISHAL MISHRA)
JUDGE

