

**IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR**

**BEFORE
HON'BLE SHRI JUSTICE DINESH KUMAR PALIWAL**

MISC. CRIMINAL CASE NO.45900 OF 2022

BETWEEN:-

1. **RAJU @ RAJENDRA, AGED ABOUT 54 YEARS, S/O PARASRAM YADAV, OCCUPATION – AGRICULTURIST, R/O TILAK WARD, GARHAKOTA, SAGAR, DISTRICT SAGAR (MADHYA PRADESH)**
2. **ROHIT YADAV, AGAED ABOUT 29 YEARS, S/O RAJU @ RAJENDRA YADAV, OCCUPATION LABOUR, R/O TILAK WARD, GARHAKOTA, SAGAR, DISTRICT SAGAR (MADHYA PRADESH)**
3. **SHANI @ CHANDRASHEKHAR, AGED ABOUT 19 YEARS, S/O SIDDHACHARAN YADAV, OCCUPATION LABOUR, R/O TILAK WARD, GARHAKOTA, SAGAR, DISTRICT SAGAR (MADHYA PRADESH)**
4. **MUKESH YADAV, AGED ABOUT 35 YEARS, S/O PARASRAM YADAV, OCCUPATION LABOUR, R/O TILAKWARD, GARHAKOTA, DISTRICT SAGAR (MADHYA PRADESH)**

.....APPLICANTS

(BY SHRI SHARAD VERMA - ADVOCATE)

AND

**STATE OF MADHYA PRADESH, THROUGH
POLICE STATION GORAKHPUR THANA,**

**RAMPUR CHOWKI, DISTRICT JABALPUR
(MADHYA PRADESH)**

.....RESPONDENT

(SHRI DILEEP SHRIVASTAVA – GOVERNMENT ADVOCATE)

.....
Reserved on : *11.05.2023*

Pronounced on : *13 .06.2023*
.....

This petition having been heard and reserved for orders, coming on for pronouncement this day, the Court passed following:

ORDER

This petition under Section 482 of Code of Criminal Procedure, 1973 has been filed by the applicants being aggrieved with the order dated 24.08.2022 passed by II Additional Sessions Judge, Rahli, District Sagar (M.P.) in Session Trial No.76 of 2015 (*State of M.P. Vs. Raju @ Rajendra & Others*) under Sections 302, 307, 147, 148 of IPC whereby the application moved by the applicants/accused Raju @ Rajendra and Others under Section 311 of Cr.P.C. for recalling Mohd. Shahjad (P.W.-15) for further cross-examination was rejected by the aforesaid trial Court.

2. Learned counsel for the parties are heard.
3. On perusal of the impugned order, it is revealed that an application under Section 311 of Cr.P.C. was moved on behalf of the applicants/accused for recalling Mohd. Shahjad (PW-15) for further cross examination on the ground that some of the clarification could not

be taken by the counsel during his evidence/cross-examination on 07.10.2017. The aforesaid application under Section 311 of Cr.P.C. was rejected by the learned trial Court vide impugned order dated 24.08.2022.

4. Learned counsel for the applicants submitted that learned trial Court has rejected the application, without applying of judicial mind, only on the grounds; firstly that cross-examination of Mohd. Shahjad (PW-15) has already been done on behalf of the accused/applicants, and secondly; no party can be permitted to fill up the lacuna left in cross-examination of witness by allowing further cross-examination of the aforesaid witness who was examined and cross-examined 5 years ago. Learned counsel for the applicants has further submitted that aforesaid witness Mohd. Shahjad (PW-15) is an important witness, in his cross-examination, which was made by the earlier counsel, some of necessary questions and explanation could not be put/obtained from him. Therefore, it is necessary to recall him for further cross-examination seeking his explanation on certain points.

5. It is submitted by learned counsel for the applicants that at the time of disposal of application under Section 311 of Cr.P.C., learned trial Court has not considered the essentiality of further cross-examination of Mohd. Shahjad (PW-15) for just decision of the case. Hence, the impugned order may be set aside and trial Court may be directed to recall witness Mohd. Shahjad (PW-15) for further cross examination.

6. On the other hand, learned counsel for the respondent/State has opposed the prayer made by learned counsel for the applicants and has

submitted that in the application under Section 311 of Cr.P.C., the applicants have made it clear that some explanations could not be obtained from the witness during his earlier cross-examination. It is also submitted that defence cannot be permitted to fill up the lacuna left in the cross-examination of the witness by recalling the witness for further cross examination. Therefore, he has prayed for dismissal of the petition.

7. I have carefully considered the rival submissions made by the parties and have gone through the impugned order.

8. The nature and scope of the power exercised by the Court under Section 311 of Cr.P.C. was elaboratory considered in the case of **Raja Ram Prasad Vs. State of Bihar and another, 2013 (14) SCC 461** and it was held that the power under Section 311 Cr.P.C. must therefore, be invoked by the Court only in order to meet the ends of justice for strong and valid reasons and the same must be exercised with care, caution and circumspection. The Court should bear in mind that fair trial entails the interest of the accused, the victim and the society and, therefore, the grant of fair and proper opportunities to the persons concerned, must be ensured being a constitutional goal, as well as a human right. There is no doubt in the legal position that Court has to bear in mind the essentiality of evidence for just decision of the case while deciding the application under Section 311 of Cr.P.C. as held by the Hon'ble Apex Court in catena of judgment and also the duration of a case cannot displace the specific requirements of the just decision after taking all the necessary material evidence on record.

9. On a perusal of the application filed by the accused/applicants before the trial Court under Section 311 of Cr.P.C, it is apparent that in it it is mentioned that clarification on some of the points about contradictions appeared in his evidence could not be obtained during his earlier cross-examination, therefore, he be permitted to recall the witness for further cross-examination. It is settled position of law that help of Section 311 of Cr.P.C. cannot be given to accused to fill up the loopholes mere submission that earlier counsel could not cross-examine the witness on particular point cannot be a ground to recall a witness. An application under Section 311 of Cr.P.C. cannot be allowed only to fill up the lacuna of prosecution case or the defence. Unfair advantage cannot be given to any of the parties and no one can be permitted to call the witness for further cross-examination without reason as to why recall is necessary for further cross-examination of a witness who has already been examined and cross-examined fully.

10. It is settled that opportunity of fair trial has to be given to the accused but it should also be kept in mind that the interest of the victim and society at large should not be prejudice. The earlier cross-examination of the witness was made by the counsel and due & fair opportunity was given to the applicants long back in the year 2017. How a permission can be given to applicants/accused to fill up the lacuna which are left in cross-examination that too after 6 years of his examination and cross-examination before trial Court. In such circumstances, no ground is made out to permit/recall the witness. Needless to say that the power under Section 482 of Cr.P.C. has to be exercised sparingly when there is apparent error or gross injustice would

be caused in view taken by the Subordinate Court. In the present case, fair opportunity was granted to the accused and opportunity cannot be given to meet out the loopholes in evidence by way of Section 311 of Cr.P.C., which may cause prejudice to either of the parties.

11. In view of the above discussions, this Court does not find any error in the impugned order and is not inclined to interfere with. Accordingly, the application under Section 482 of Cr.P.C. is **dismissed**.

(DINESH KUMAR PALIWAL)
JUDGE

@shish