

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

**BEFORE**

**HON'BLE SHRI JUSTICE RAJENDRA KUMAR (VERMA)**

**ON THE 15<sup>th</sup> OF MARCH, 2023**

**MISC. CRIMINAL CASE No. 11460 of 2023**

**BETWEEN:-**

**PRAMOD KOLHE S/O SUDAMJIKOLHE, AGED ABOUT 35  
YEARS, OCCUPATION: AGRICULTURIST BHAGAT  
SINGH WARD PANDHURNA DISTRICT CHHINDWARA  
(MADHYA PRADESH)**

**.....APPLICANT**

**(BY SHRI MADAN SINGH - ADVOCATE)**

**AND**

**THE STATE OF MADHYA PRADESH THROUGH POLICE  
STATION PANDHURNA DISTRICT CHHINDWARA  
(MADHYA PRADESH)**

**.....RESPONDENTS**

**(BY SHRI DINESH PATEL - PANEL LAWYER)**

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

**ORDER**

This petition under Section 482 of the Code of Criminal Procedure (hereinafter referred as "Code") has been filed to set aside the order dated 25.02.2023 passed by the learned Additional Sessions Judge, Pandhurna, District Chhindwara (M.P) in ST No.25/2020 whereby the application under Section 311 of the Code for recalling the witnesses namely PW/2 Vitthal Kolhe, PW/4 Harshika Kolhe and PW/9 Omprakash Sanodiya has been dismissed.

2. Brief facts of the case are that the petitioner is facing trial for offence under Section 306/34 of the Indian Penal Code. During the trial, PW/2 Vitthal

was examined on 13.12.2018, PW/4 Harshika Kolhe was examined on 06.08.2019 and PW/9 Om Prakash Sanodiya, Sub-inspector was examined on 09.11.2022. All of them has been cross-examined by all the accused also.

3. Petitioner and co-accused has filed an application under Section 311 of the Code on 22.02.2023 (appended as Annexure /A) to recall the above three witnesses to ask them certain questions which had not previously put before them and the learned trial Court dismissed that application by the impugned order.

4. Learned counsel for the petitioners submits that impugned order is per-se illegal and without jurisdiction. It is also submitted that trial is still in progress and yet to be concluded and no failure of justice would occasion and no prejudice has been caused either to the applicant or to the prosecution if application is allowed. Further, the Court has discretionary power under Section 311 of the Code under which the Court may summon any person as a witness or examine or recall any witness. It is also submitted that proceedings are manifestly tainted with malafides and the proceedings are maliciously instituted with an ulterior motive for wrecking vengeance on the accused and with a view to spite them due to private and personal grudge and if the above application under Section 311 of the Code is not allowed the petitioner would suffer. It is also submitted that PW/2 Vitthal Kolhe, PW/4 Harshika Kolhe and PW/9 Omprakash Sanodiya are required to be further cross-examined for determining the real controversy in the case.

5. Learned counsel for the petitioners has placed reliance on the judgment passed by various Courts in **Khoob Kanhaiya Singh Vs. State of M.P. 2018 CRI LJ. 2658, Manju Devi Vs. State of Rajasthan AIR 2019 SC 176, Himanshu Singh Sabharwal Vs. State of M.P. and Ors. AIR 2008 SC**

**1943, Iddar and others Vs. Aabida and another 2017 (III) MPWN 89.**

6. Learned panel lawyer vehemently opposed the prayer and submits that cross-examination of the witnesses has been done on the same day by the defence counsel and only to delay the trial, this application has been filed after delay of 5 years of recording of evidence of PW/2 Vitthal Kolhe and after four years of recording of evidence of PW/4 Harshika Kolhe.

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

8. It is settled law that if conditions under Section 311 of the Code are satisfied, the Court can call witness not only on the motion of either prosecution or the defence but it can do so at any stage and any person can be summoned as a witness, or recall or re-examine at any stage of proceeding where essential.

9. In the case at hand, PW/2 Vitthal has turned hostile, even though he was thoroughly cross-examined by the defence counsel. PW/4 Harshika Kolhe was also thoroughly cross-examined by the defence counsel and same is in the relation of PW/9 Omprakash.

10. On perusal of the impugned order it reveals that when the case was fixed for examination of the accused under Section 313 of the Code, the accused/petitioner and other co-accused has moved an application to recall the above named witnesses on the ground that certain questions remained to be asked from aforesaid witnesses.

11. The application under Section 313 must not be allowed only to fill up a lacunae in a case of the prosecution or of the defence, or to the disadvantage of the accused or to cause serious prejudice to the defence of the accused, or to give an unfair advantage to the opposite party. The power conferred under Section 313 of the Code must be invoked by the Court only in order to meet

the ends of justice for strong and valid reasons and same may be exercised with great caution and circumspection.

12. The delay in filing the application is one of the important factor which has to be explained in the application. In ***Ratan Lal Vs Prahalad Jat and ann. (2017) 9 SCC 340***, in paragraph 21 & 22 it has been held by the apex Court as under :-

"21. The delay in filing the application is one of the important factors which has to be explained in the application. In Umar Mohammad v. State of Rajasthan [Umar Mohammad v. State of Rajasthan, (2007) 14 SCC 711 : (2009) 3 SCC (Cri) 244] , this Court has held as under: (SCC p. 719, para 38)

"38. Before parting, however, we may notice that a contention has been raised by the learned counsel for the appellant that PW 1 who was examined in Court on 5-7-1994 purported to have filed an application on 1-5-1995 stating that five accused persons named therein were innocent. An application filed by him purported to be under Section 311 of the Code of Criminal Procedure was rejected by the learned trial Judge by order dated 13-5-1995. A revision petition was filed there against and the High Court also rejected the said contention. It is not a case where stricto sensu the provisions of Section 311 of the Code of Criminal Procedure could have been invoked. The very fact that such an application was got filed by PW 1 nine months after his deposition is itself a pointer to the fact that he had been won over. It is absurd to contend that he, after a period of four years and that too after his examination-in-chief and cross-examination was complete, would file an application on his own will and volition. The said application was, therefore, rightly dismissed."

13. In ***Swapan Kumar Chatterjee Vs Central Bureau of Investigation (2019) 14 SCC 328***, the Apex Court in paragraph 11 has held as under :-

"11. It is well settled that the power conferred under Section

311 should be invoked by the court only to meet the ends of justice. The power is to be exercised only for strong and valid reasons and it should be exercised with great caution and circumspection. The court has wide power under this section to even recall witnesses for re-examination or further examination, necessary in the interest of justice, but the same has to be exercised after taking into consideration the facts and circumstances of each case. The power under this provision shall not be exercised if the court is of the view that the application has been filed as an abuse of the process of law."

14. In view of the above facts and statements and considering the submissions of the learned counsel for the parties, this Court has gone through the material on record and came to the conclusion that learned Sessions Judge has already given reasons in the impugned order for not recalling PW/2, PW/4 and PW/9.
15. The order dated 25.02.2023 is well reasoned order. No interference is required by this Court.
16. Accordingly, this M.Cr.C. is dismissed.
17. Pending I.As, if any, are also disposed off.

**(RAJENDRA KUMAR (VERMA))**  
**JUDGE**