

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

**BEFORE**

**HON'BLE SHRI JUSTICE GURPAL SINGH AHLUWALIA**

**ON THE 15<sup>th</sup> OF MAY, 2024**

**MISC. CRIMINAL CASE No. 11175 of 2024**

**BETWEEN:-**

**SMT. JAISHREE MANWANI W/O LATE SHRI  
MAHESH MANWANI, AGED ABOUT 60 YEARS,  
OCCUPATION: BUSINESS R/O FLAT NO A- 152  
CHINAR APARTMENT E- I ARERA COLONY  
BHOPAL (MADHYA PRADESH)**

**.....PETITIONER**

***(BY SHRI ROHIT SHARMA – ADVOCATE THROUGH VIDEO CONFERENCING)***

**AND**

**SHRI VISHAL KUMAR BALWANI S/O NOT  
MENTION R/O 48-A B.D.A. COLONY KOH E FIZA  
DISTRICT BHOPAL (MADHYA PRADESH)**

**.....RESPONDENTS**

***(BY SHRI DHRUV VERMA - ADVOCATE THROUGH VIDEO CONFERENCING)***

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

**ORDER**

This application under Section 482 of Cr.P.C. has been filed  
seeking following relief(s):-

*“(i) Call for the records of RCT 1318/2017;*

*(ii) To allow the instant petition and quash / set aside the impugned order dated 24.02.2024 passed by the Ld. Trial Court in Case No. RCT 1318/2017;*

*(iii) Any other relief or reliefs as deemed fit may please be awarded by this Hon'ble Court.”*

2. It is submitted by counsel for applicant that the applicant is a widow lady who had lost her husband in the year 2015. The complainant was examined and cross-examined by the counsel for applicant at length. However, after the new lawyer accepted the brief, he found that certain important questions were not put to the complainant, therefore, he filed an application under Section 311 of Cr.P.C. for recall of the complainant but the said application has been rejected by the impugned order.

3. Challenging the order passed by the Court below, it is submitted by counsel for applicant that it is well established principle of law that a party to the litigation must get full and fair opportunity to defend himself or herself. While exercising power under Section 311 of Cr.P.C., the Court has to see as to whether the recall of a witness is necessary for just decision of the case or not. However, on a query raised by this Court, the counsel for applicant submitted that his previous counsel was not incompetent.

4. *Per contra*, the application is vehemently opposed by counsel for respondent.

5. Heard the learned counsel for parties.

6. The Supreme Court in the case of **State (NCT of Delhi) v. Shiv Kumar Yadav**, reported in **(2016) 2 SCC 402** has held that recall of a witness merely on change of counsel is not permissible.

7. Even in the present case, Shri Rohit Sharma took over the brief and immediately thereafter the complainant moved an application under Section 311 of Cr.P.C. The application was filed after 5 years of the cross-examination of the complainant. It is true that the accused must get all opportunities to defend himself but it is not the case of the applicant that any opportunity was curtailed by the trial Court while cross-examination of the complainant was going on. Once, the applicant has given a certificate to the predecessor that he is a competent lawyer, then whatever the previous lawyer thought proper as per his wisdom, that was done by him. Merely, because the subsequent counsel is of the view that the cross-examination was not done properly, the said apprehension or impression cannot be a sufficient ground to recall witness because this Court is not only required to protect the interest of the accused but it is also required to protect the interest of the witnesses because unnecessarily re-summoning of the witnesses will also cause undue hardship to them, which has to be avoided specifically when the present counsel for the applicant has categorically stated that his previous counsel was not incompetent. Even otherwise, the Courts are not supposed to treat any counsel as incompetent.

8. Since, the change of counsel cannot be a ground to recall a witness, accordingly, trial Court did not commit any mistake by rejecting the application filed under Section 311 of Cr.P.C.

9. Consequently, the order dated 24.02.2024 passed by JMFC, Bhopal in RCT No.1318/2017 is hereby **affirmed**.
10. The application fails and is hereby **dismissed**.

**(G.S. AHLUWALIA)**  
**JUDGE**

VB\*