

IN THE HIGH COURT OF JHARKHAND AT RANCHI

Cr. Rev. No. 980 of 2023

Binod Kumar MishraPetitioner

Versus

1. The State of Jharkhand

2. Aryan JaiswalOpp. Parties

CORAM : HON'BLE MR. JUSTICE SUBHASH CHAND

For the Petitioner : Mr. Abhishek Kumar, Advocate

For the State : Mr. Sardhu Mahto, A.P.P.

For the O.P.No.2 : Mr. Gaurav, Advocate

Order No. 07/ dated 09.02.2024

The instant Cr. Revision has been directed on behalf of the petitioner against the order dated 12.07.2023 passed by the learned Chief Judicial Magistrate, Khunti in Complaint Case No.48 of 2016 whereby the application filed under Section 311 of Cr.P.C. for production of the document has been rejected.

2. The brief facts leading to this Cr. Revision are that the petitioner-complainant has filed the complaint against accused-Aryan Kumar Jaiswal for dishonour of the cheque issued to set up the business of medicine.

3. In the complaint case, the evidence of the complainant was completed. The statement of the accused under Section 313 of Cr.P.C. was recorded and thereafter the accused examined himself in defence evidence in which this fact was deposed by the accused that the marriage of his sister was cancelled in Hyderabad. In regard to the same he has apprised to the complainant in October, 2015 and the said cheque was demanded back from him and the complainant told that the same cheque was kept in his Office. In the meantime, the marriage of

his sister was decided to be solemnized on 06.12.2015. The said cheque was never returned despite of repeated demand.

4. In order to rebut this fact which was deposed by the accused in evidence, the complainant moved the application before the learned court-below to adduce the copy of the F.I.R.

5. Against the said application, the objection was filed on behalf of the accused.

6. The learned trial court after hearing the rival submissions of learned Counsel of both the parties, passed the impugned order on 12.07.2023 and rejected the application of the petitioner/complainant.

7. Aggrieved from the impugned order dated 12.07.2023, this Cr. Revision has been preferred on behalf of the petitioner/complainant on the ground that the impugned order passed by the learned court-below is bad in the eye of law. The learned court-below has erred in holding that the said application was not maintainable at that stage after completion of the evidence of the complainant and after recording the statement of accused under Section 313 of Cr.P.C. and also conclusion of evidence of defence and the impugned order passed by the learned court-below holding that the complainant cannot be permitted to rebut the evidence adduced by the accused in defence by way of moving application under Section 311 of Cr.P.C. with a view to adduce the documentary evidence.

8. I have heard the learned Counsel for the parties and perused the material on record.

9. Admittedly, the evidence of the complainant was concluded and statement of the accused was also recorded under Section 313 of Cr.P.C. and the accused himself has also examined before the learned trial court. In the application under Section 311 of Cr.P.C. on behalf of complainant this plea is raised that the cheque which was issued by the accused in regard to the liability to set up the business of medicine and from the same he deviated in the defence evidence and took this new plea for the first time in defence evidence that at the time of solemnization of the marriage the accused had demanded the cheque from the complainant and those cheques were issued only for the purpose of security.

10. By way of this application the complainant wants to rebut the said fact by adducing the F.I.R. and the agreement annexed with this application.

11. The learned Counsel for the respondent has vehemently opposed the contention of the petitioner on the very ground that in view of the provision of Section 311 of Cr.P.C. only the witnesses can be examined, re-examined or cross-examined. There is no provision in regard to adduce any documentary evidence. The said contention of learned Counsel of the Respondent is not found tenable.

12. Section 91 is also to be read along with Section 311 of Cr.P.C. **Section 91 and Section 311 of Cr.P.C.** are reproduced here-in-below:

91. Summons to produce document or other thing.-(1) Whenever any Court or any officer in charge of a police station considers that the production of any document or other thing is necessary or desirable for the purposes of any investigation, inquiry, trial or other

proceeding under this Code by or before such Court or officer, such Court may issue a summons, or such officer a written order, to the person in whose possession or power such document or thing is believed to be, requiring him to attend and produce it, or to produce it, at the time and place stated in the summons or order.

(2) Any person required under this section merely to produce a document or other thing shall be deemed to have complied with the requisition if he causes such document or thing to be produced instead of attending personally to produce the same.

(3) Nothing in this section shall be deemed-

(a) to affect sections 123 and 124 of the Indian Evidence Act, 1872 (1 of 1872), or the Bankers' Books Evidence Act, 1891 (13 of 1891), or

(b) to apply to a letter, postcard, telegram or other document or any parcel or thing in the custody of the postal or telegraph authority.

311. Power to summon material witness, or examine person present.- Any Court may, at any stage of any inquiry, trial or other proceeding under this Code, summon any person as a witness, or examine any person in attendance, though not summoned as a witness, or recall and re-examine any person already examined; and the Court shall summon and examine or recall and re-examine any such person if his evidence appears to it to be essential to the just decision of the case.

12.1 The very purpose of this Section 311 of Cr.P.C. is to ensure the fair trial which is also enshrined in Article 21 of the Constitution of India. Even if there is no specific provision in Section 311 of Cr.P.C. in regard to adducing the documentary evidence; but reading Section 91 and 311 of Cr.P.C. simultaneously to ensure the fair trial the documentary evidence may also be adduced even after conclusion of the evidence so as to give the just decision of the case.

12.2 The Hon'ble Apex Court held in *Varsha Garg vrs. State of Madhya Pradesh 2022 (4) JBCJ 312[SC] at para 35:*

35. In the present case, the application of the prosecution for the production of the decoding registers is relatable to the provisions of Section 91 Cr.P.C. The decoding registers are sought to be produced through the representatives of the cellular companies in whose custody or possession they are found. The decoding registers are a relevant piece of evidence to establish the co-relationship between the location of the accused and the cell phone tower. The reasons which weighed with the High Court and the Trial Court in dismissing the application are extraneous to the power which is conferred under Section 91 on the one hand and Section 311 on the other. The summons to produce a document or other thing under Section 91 can be issued where the Court finds that the production of the document or thing "is necessary or desirable for the purpose of any investigation, trial or other proceeding" under the Cr.P.C. As already noted earlier, the power under Section 311 to summon a witness is conditioned by the requirement that the evidence of the person who is sought to be summoned appears to the Court to be essential to the just decision of the case.

13. The learned trial court by passing the impugned order has rejected the application of the petitioner on the sole ground that the complainant cannot be permitted to rebut the evidence adduced in defence after concluding his evidence, the same finding is found perverse and the same order needs interference. Accordingly, this Cr. Revision deserves to be allowed.

14. This Cr. Revision is hereby allowed. The impugned order passed by the court-below is set aside.

15. The application under Section 311 of Cr.P.C. filed by the petitioner/complainant is hereby allowed and the documents filed by the petitioner/complainant be taken on record.

26. Let the learned trial court be communicated to this order.

(Subhash Chand, J.)