

HIGH COURT OF JUDICATURE AT ALLAHABAD
SITTING AT LUCKNOW

Neutral Citation No. - 2024:AHC-LKO:22401
A.F.R.

Court No. - 27

Case :- APPLICATION U/S 482 No. - 2138 of 2024

Applicant :- Haribhan Singh

**Opposite Party :- State Of U.P. Thru. Prin. Secy. Deptt. Home Civil
Secrt. Lko. And Another**

Counsel for Applicant :- Amit Kumar Singh, Brijendra Pratap Singh

Counsel for Opposite Party :- G.A.

Hon'ble Subhash Vidyarthi J.

1. Heard Sri Amit Kumar Singh, the learned counsel for the applicant, Sri Anurag Verma, the learned A.G.A.-I appearing on behalf of the State and perused the records.

2. By means of the instant application the applicant has challenged the validity of an order dated 22.12.2023, passed by the learned Additional District and Sessions Judge/Special Judge, E.C. Act, Court No.4, Sultanpur in Sessions Trial No.467 of 2016, under Sections 147, 148, 149, 504, 506, 307, 302 I.P.C. Police Station Jamo, District Amethi, whereby the application filed by the applicant and another co-accused Ram Nath Singh under Section 311 Cr.P.C. for recall of PW-1 for being cross-examined by them has been rejected.

3. The application under Section 311 Cr.P.C. was filed on the ground that the accused Deependra Singh was summoned to face trial under Section 319 Cr.P.C. after PW-1 was reexamined and he was cross-examined on behalf of the newly added accused Deependra

Singh. However, other accused person did not cross-examine the said witness after his recall. It was stated in the application that after a person is summoned as an accused under Section 319 Cr.P.C. the trial starts de novo and therefore all the accused persons have the right to cross-examine him. The learned trial court rejected the application without taking into consideration the fact that after PW-1 was examined by the prosecution the counsel for the applicant had cross-examined him and the record of cross examination runs into 17 pages. The said witness was cross-examined by other co-accused Ram Nath Singh also and that cross-examination runs into 7 pages. Deependra Singh was summoned to face trial under Section 319 Cr.P.C. after PW-1 had been examined. In these circumstances there is no ground for recalling the PW-1 for being cross-examined by the accused person, on whose behalf he has already been cross-examined extensively.

4. The learned trial court has also taken into consideration the fact that this court has issued a direction for expeditious disposal of the trial.

5. The learned counsel for the applicant has relied upon a decision of Hon'ble Supreme Court in the case of **State represented by the Deputy Superintendent of Police Vs. Tr. N. Seenivasagan**: (2021) 14 SCC 1 : 2021 SCC OnLine SC 212, wherein the Hon'ble Supreme Court has held as under: -

“12. In our view, having due regard to the nature and ambit of Section 311 of the CrPC, it was appropriate and proper that the applications filed by the prosecution ought to have been allowed. Section 311 provides that any court may, at any stage of any inquiry, trial or other proceedings under CrPC, 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”. The true test, therefore, is whether it appears to the Court that the evidence of such person who is sought to be recalled is essential to the just decision of the case.

13. In Manju Devi v. State of Rajasthan [(2019) 6 SCC 203] , a two-Judge Bench of this Court noted that an application under Section 311 could not be rejected on the sole ground that the case had been pending for an inordinate amount of time (ten years there). Rather, it noted that : (SCC p. 209, para 13)

“13. ... the length/duration of a case cannot displace the basic requirement of ensuring the just decision after taking all the necessary and material evidence on record. In other words, the age of a case, by itself, cannot be decisive of the matter when a prayer is made for examination of a material witness”.

Speaking for the Court, Dinesh Maheshwari J. expounded on the principles underlying Section 311 in the following terms :

“10. It needs hardly any emphasis that the discretionary powers like those under Section 311 CrPC are essentially intended to ensure that every necessary and appropriate measure is taken by the Court to keep the record straight and to clear any ambiguity insofar as the evidence is concerned as also to ensure that no prejudice is caused to anyone. The principles underlying Section 311CrPC and amplitude of the powers of the court thereunder have been explained by this Court in several decisions. In Natasha Singh v. CBI [(2013) 5 SCC 741] , though the application for examination of witnesses was filed by the accused but, on the principles relating to the exercise of powers under Section 311, this Court observed, inter alia, as under :

*‘8. Section 311 CrPC empowers the court to summon a material witness, or to examine a person present at “any stage” of “any enquiry”, or “trial”, or “any other proceedings” under CrPC, or to summon any person as a witness, or to recall and re-examine any person who has already been examined **if his evidence appears to it, to be essential to the arrival of a just decision of the case.** Undoubtedly, CrPC has conferred a very wide discretionary power upon the court in this respect, but such*

a discretion is to be exercised judiciously and not arbitrarily. The power of the court in this context is very wide, and in exercise of the same, it may summon any person as a witness at any stage of the trial, or other proceedings. The court is competent to exercise such power even suo motu if no such application has been filed by either of the parties. However, the court must satisfy itself, that it was in fact essential to examine such a witness, or to recall him for further examination in order to arrive at a just decision of the case.

15. The scope and object of the provision is to enable the court to determine the truth and to render a just decision after discovering all relevant facts and obtaining proper proof of such facts, to arrive at a just decision of the case. Power must be exercised judiciously and not capriciously or arbitrarily, as any improper or capricious exercise of such power may lead to undesirable results. An application under Section 311CrPC must not be allowed only to fill up a lacuna in the 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. Further, the additional evidence must not be received as a disguise for retrial, or to change the nature of the case against either of the parties. Such a power must be exercised, provided that the evidence that is likely to be tendered by a witness, is germane to the issue involved. An opportunity of rebuttal however, must be given to the other party. The power conferred under Section 311CrPC 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 great caution and circumspection. The very use of words such as “any court”, “at any stage”, or “or any enquiry, trial or other proceedings”, “any person” and “any such person” clearly spells out that the provisions of this section have been expressed in the widest possible terms, and do not limit the discretion of the court in any way. There is thus no escape if the fresh evidence to be obtained is essential to the just decision of the case. The determinative factor should therefore be, whether the summoning/recalling of

the said witness is in fact, essential to the just decision of the case."

(emphasis in original)

6. Per contra, the learned A.G.A.-I has submitted that the PW-1 was recalled for being examined after the witness Deependra Singh was summoned to face trial under Section 319 Cr.P.C. As per the provisions contained in Section 319 (4) Cr.P.C. the proceedings can commence afresh only against the accused who has been summoned under Section 319 Cr.P.C. and not against all the accused persons. In these circumstances, only the accused who has been summoned under Section 319 Cr.P.C. has a right to cross-examine the witness and the persons who were accused since before and who had already availed opportunity of cross-examining the witness, have no right to cross-examine the witness again.

7. Section 319 (4) Cr.P.C. provides as follows: -

“319. Power to proceed against other persons appearing to be guilty of offence.—*(1) Where, in the course of any inquiry into, or trial of, an offence, it appears from the evidence that any person not being the accused has committed any offence for which such person could be tried together with the accused, the Court may proceed against such person for the offence which he appears to have committed.*

(2) Where such person is not attending the Court, he may be arrested or summoned, as the circumstances of the case may require, for the purpose aforesaid.

(3) Any person attending the Court, although not under arrest or upon a summons, may be detained by such Court for the purpose of the inquiry into, or trial of, the offence which he appears to have committed.

(4) Where the Court proceeds against any person under subsection (1) then—

(a) the proceedings in respect of such person shall be commenced afresh, and the witnesses re-heard;

(b) subject to the provisions of clause (a), the case may proceed as if such person had been an accused person when the Court took cognizance of the offence upon which the inquiry or trial was commenced.”

8. A bare reading of Section 319 (4) Cr.P.C. indicates that where a person is summoned under Section 319 (1) to face the trial, the proceedings shall be commenced afresh and the witnesses re-heard only in respect of such person and not in respect of all the accused persons. Therefore, the applicant having been an accused since inception of the trial and he already having cross examined the witness PW-1, he has no right to recall PW-1 for cross examining him again after he was re-examined by the prosecution consequent to another accused being summoned under Section 319 Cr.P.C.

9. Although, it is correct that Section 311 Cr.P.C. confers wide powers on the court to summon any witness at any stage of the enquiry, trial or other proceeding but that power has to be exercised only when it is essential for just decision of the case.

10. In these circumstances, the applicant has no right to seek further cross-examination of PW-1 and such cross-examination is not at all essential for just decision of the case. There appears to be no illegality in the impugned order. The application lacks merit and the same is accordingly ***dismissed***.

(Subhash Vidyarthi, J.)

Order Date: 14.03.2024

Ram.