

Neutral Citation No. - 2024:AHC-LKO:20271

AFR

Court No. - 27

Case :- APPLICATION U/S 482 No. - 1958 of 2024

Applicant :- Sanjeev Kumar And 3 Others

**Opposite Party :- State Of U.P. Thru. The Prin.Secy.
Home And Another**

Counsel for Applicant :- Aman Kumar Shrivastav

Counsel for Opposite Party :- G.A.

Hon'ble Subhash Vidyarthi,J.

1. Heard Sri Aman Kumar Shrivastav, learned counsel appearing for the applicants and Sri Akhilesh Kumar Vyas, learned Additional Government Advocate and perused the record.

2. By means of the instant application filed under Section 482 Cr.P.C., the applicants have challenged the validity of the order dated 31.01.2024 passed by the Additional District and Sessions Judge, outlying Court, Mohammadi, Lakhimpur Kheri whereby an application filed under Section 311 Cr.P.C. for summoning the investigating officer as a witness has been rejected.

3. It has been stated in the impugned order dated 31.01.2024 that the incident in question occurred on 06.04.2006. After investigation a final report was submitted on 20.06.2006. Thereafter, the complainant filed a protest petition on 27.07.2007, which was allowed and the applicants were summoned to face trial.

4. During trial, prosecution examined as many as 5 witnesses but the investigating officer Jai Prakash Yadav was not examined. The application under Section 311 Cr.P.C. was filed when the trial had reached at the stage of arguments and it was stated therein that it would be in the

interest of justice that the investigating officer to be examined as a witness.

5. Trial court has stated in the impugned order that prosecution evidence was closed on 03.03.2023. Statement of the accused under Section 313 Cr.P.C. was recorded on 05.04.2023 and thereafter the matter was fixed for defence evidence.

6. After examination of the defence witnesses, the matter was fixed for argument and at this stage, the accused has filed an application under Section 311 Cr.P.C. for summoning the investigating officer, who has submitted the final report as a witness.

7. Trial court held that it is for the prosecution to decide as to which its witnesses the prosecution desires to produce. The application was filed when the trial had reached the stage of arguments in order to cause delay in disposal of the trial.

8. The learned counsel for the applicant has submitted that an application under Section 311 Cr.P.C. can be filed at any stage of trial, even before delivery of final judgement. In support of this submission he has relied upon a judgement of the Hon'ble Supreme court in the case of **Manu Devi vs State of Rajasthan & Anr:** (2019) 6 SCC 203 wherein the Hon'ble Supreme Court has held 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.*

9. The learned counsel for the applicants has also relied on the judgment of the Supreme Court in the case of **Harendra Rai vs State of Bihar & Ors** 2023 SCC OnLine SC 1023 the Hon'ble Supreme Court has held that

Section 311 CrPC confers wide powers on any court at any stage of any inquiry, trial or other proceeding under this Code to summon material witness or examine person present. Such person may not be a person summoned as a witness. Power to recall and re-examine is also vested. The concept is that it should be essential for the just decision of the case.

10. The investigating officer is an officer of the prosecution and the prosecution chose not to produce him as its witness. In case the accused persons felt that evidence of the investigating officer was essential, the accused could have summoned him as a defence witness but the accused did not choose to summon him as a defence witness. The application for summoning the investigating officer has been filed when the trial reached at the stage of final arguments.

11. In **State (NCT of Delhi) vs. Shiv Kumar Yadav** : (2016) 2 SCC 402, it has been held that: -

"Certainly, recall could be permitted if essential for the just decision, but not on such consideration as has been adopted in the present case. Mere observation that recall was necessary "for ensuring fair trial" is not enough unless there are tangible reasons to show how the fair trial suffered without recall. Recall is not a matter of course and the discretion given to the court has to be exercised judiciously to prevent failure of justice and not arbitrarily. While the party is even permitted to correct its bona fide error and may be entitled to further opportunity even when such opportunity may be sought without any fault on the part of the opposite party, plea for recall for advancing

justice has to be bona fide and has to be balanced carefully with the other relevant considerations including un-called for hardship to the witnesses and un-called for delay in the trial. Having regard to these considerations, there is no ground to justify the recall of witnesses already examined."

12. In Ratanlal vs. Prahlad Jat, (2017) 9 SCC 340, it was held that: -

"17. In order to enable the court to find out the truth and render a just decision, the salutary provisions of Section 311 are enacted whereunder any court by exercising its discretionary authority at any stage of inquiry, trial or other proceeding can summon any person as witness or examine any person in attendance though not summoned as a witness or recall or re-examine any person already examined who are expected to be able to throw light upon the matter in dispute. The object of the provision as a whole is to do justice not only from the point of view of the accused and the prosecution but also from the point of view of an orderly society. This power is to be exercised only for strong and valid reasons and it should be exercised with caution and circumspection. Recall is not a matter of course and the discretion given to the court has to be exercised judicially to prevent failure of justice. Therefore, the reasons for exercising this power should be spelt out in the order."

13. In Manju Devi vs. State of Rajasthan: (2019) 6 SCC 203, the Hon'ble Court emphasized that a discretionary

power like Section 311 CrPC is to enable the Court to keep the record straight and to clear any ambiguity regarding the evidence, whilst also ensuring no prejudice is caused to anyone.

14. In **Swapan Kumar Chatterjee vs CBI**, (2019) 14 SCC 328, it was held that: -

"10. The first part of this section which is permissive gives purely discretionary authority to the criminal court and enables it at any stage of inquiry, trial or other proceedings under the Code to act in one of the three ways, namely, (i) to summon any person as a witness; or (ii) to examine any person in attendance, though not summoned as a witness; or (iii) to recall and re-examine any person already examined. The second part, which is mandatory, imposes an obligation on the court (i) to summon and examine, or (ii) to recall and re-examine any such person if his evidence appears to be essential to the just decision of the case.

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 vide 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.

15. In V. N. Patil v. K. Niranjan Kumar, (2021) 3 SCC 661, it was held that: -

"14. The object underlying Section 311 CrPC is that there may not be failure of justice on account of mistake of either party in bringing the valuable evidence on record or leaving ambiguity in the statements of the witnesses examined from either side. The determinative factor is whether it is essential to the just decision of the case. The significant expression that occurs is "at any stage of any inquiry or trial or other proceeding under this Code". It is, however, to be borne in mind that the discretionary power conferred under Section 311 CrPC has to be exercised judiciously, as it is always said "wider the power, greater is the necessity of caution while exercise of judicious discretion".

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17. The aim of every court is to discover the truth. Section 311 CrPC is one of many such provisions which strengthen the arms of a court in its effort to unearth the truth by procedure sanctioned by law. At the same time, the discretionary power vested under Section 311 CrPC has to be exercised judiciously for strong and valid reasons and with caution and circumspection to meet the ends of justice."

16. In Harendra Rai vs. State of Bihar 2023 SCC OnLine SC 1023, a three Judge Bench of the Hon'ble

Court was held that Section 311, CrPC should be invoked when it is essential for the just decision of the case.

17. In the present case, the application under Section 311 Cr.P.C. was moved by the accused persons when trial reached the stage of hearing final submissions, for summoning the investigating officer, who is an officer of the prosecution. The prosecution could have produced the investigating officer as its witness, but it chose not to examine him. The accused also examined his witnesses but he chose not to examine the investigating officer as a defence witness. When the trial reached the stage of submissions, the application has been moved for summoning the investigating officer as a witness on the ground that he had submitted a final report. Submission of the final report is not a disputed question of fact and there does not appear to be any necessity for examination of the investigating officer to prove this fact.

18. Besides making a bald statement that it would be in the interest of justice to examine the investigating officer, nothing has been stated as to why his examination is essential for a just decision of the case.

19. From the aforesaid discussion calling of the investigating officer to be examined a witness at this stage does not appear to be essential for a just decision of a case. The application has been moved apparently to cause delay in conclusion of the trial and it has rightly been rejected by the trial court.

20. As there is no illegality in the order of the trial court, the application under Section 482 Cr.P.C. lacks merit and the same is hereby rejected.

(Subhash Vidyarthi, J.)

Order Date :- 6.3.2024
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