



HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR

S.B. Criminal Miscellaneous (Petition) No. 3885/2024

Pooranmal Yadav S/o Shri Sitaram, Aged About 25 Years, R/o Kairiyawali Dhani, Tan Niwana, Police Station Govindgarh, District Jaipur, Rajasthan.

----Petitioner

Versus

State of Rajasthan, through P.P.

----Respondent

For Petitioner(s) : Mr.Shishram Saini

For Respondent(s) : Mr.Amit Kumar Gupta, PP

JUSTICE ANOOP KUMAR DHAND
Order

11/11/2025

Reportable

1. By way of filing the instant misc. petition, a challenge has been led to the impugned orders dated 03.04.2024 passed by the Additional Sessions Judge, Chomu, District Jaipur in Sessions Case No.2/2024 by which the opportunity of cross-examination of the petitioner with the Prosecution Witnesses PW-1 Deepa and PW-2 Sunita has been closed and the order dated 10.05.2024 whereby the application submitted by the petitioner under Section 311 Cr.P.C. for recalling of the above two witnesses has been rejected.

2. Learned counsel for the petitioner submits that the petitioner is under trial for the offences under Sections 376(2)(n), 506 & 392 of IPC before the Court of Additional Sessions Judge, Chomu, wherein charges were framed against him for the above stated offences vide order dated 20.02.2024 and the prosecution witnesses were summoned on the next date, i.e., 03.04.2024. Counsel submits that on the fateful day, that was the first day for





recording of the statements of the above stated witnesses, counsel for the petitioner was not keeping well as he was suffering from an ailment. Hence, an application was submitted in writing for granting opportunity to cross-examine the Prosecution Witnesses on some other day, but the prayer made by the counsel was not accepted and the application was rejected and on the very same day, the petitioner's opportunity of cross-examination was closed by the trial Court vide impugned order dated 03.04.2024. Counsel submits that on the next day, an application under Section 311 Cr.P.C. was submitted by the petitioner for re-summoning the above two witnesses for the purpose of cross-examination, however, the said application was rejected by the trial Court vide impugned order dated 10.05.2024. Counsel submits that cross-examination is a statutory right of the accused and in order to conduct a just and fair trial, the petitioner cannot be deprived of the aforesaid opportunity, hence, interference of this Court is warranted.

3. *Per contra*, learned Public Prosecutor opposed the prayer.
4. Heard and considered the submissions made at the Bar and perused the material available on record.
5. Perusal of the record indicates that the charges were framed against the petitioner for the offences under Sections 376(2)(n), 506 & 392 of IPC by the trial Court vide order dated 20.02.2024 and thereafter, the case was posted for 03.04.2024 and the prosecution witnesses were summoned on the said day. On the fateful day, two witnesses, namely PW-1 Deepa and PW-2 Sunita, i.e., the prosecutrix and her mother appeared in the witness box,



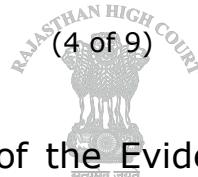


but the counsel appearing on behalf of the petitioner was not keeping well, hence, he submitted an application seeking time for the purpose of conducting cross-examination of the Prosecution Witnesses. However, the said application was rejected and on the very same day, the petitioner's opportunity to cross-examine the above two witnesses was closed. Thereafter, an application under Section 311 Cr.P.C. was submitted by the petitioner for summoning the above two witnesses for the purpose of conducting their cross-examination. However, the said application was also rejected by the trial Court vide impugned order dated 10.05.2024.

6. In the considered opinion of this Court, there is no delay on the part of the petitioner with an intention to prolong the trial. On the very first day, when the prosecution witnesses appeared in the witness box, the counsel appearing on behalf of the petitioner sought time to conduct cross-examination on some other day for the reason of his suffering from ailment and being unwell. However, the trial Court closed the petitioner's opportunity to cross-examine the prosecution witnesses without any justified reason. Thereafter, the application submitted by the petitioner for recalling the prosecution witnesses for the purpose of cross-examination was also rejected by the trial Court vide impugned order dated 10.05.2024, thereby closing the petitioner's opportunity to cross-examine the prosecution witnesses.

7. A right to cross-examine a witness, apart from being a natural right is a statutory right. Section 137 of the Evidence Act provides for examination-in-chief, cross-examination and re-





examination. Section 138 of the Evidence Act confers a right on the adverse party to cross-examine a witness who had been examined in chief, subject of course to expression of his desire to the said effect. But indisputably such an opportunity is to be granted. An accused has not only a valuable right to represent himself, he has also the right to be informed thereabout. If an exception is to be carved out, the statute must say so expressly or the same must be capable of being inferred by necessary implication. There are statutes like the Extradition Act, 1962 which excludes taking of evidence vis-à-vis opinion.

8. Hence, it is clear that cross-examination is the statutory right of the accused. Unless and until this opportunity is provided to the petitioner-accused, he would not be in a position to put his defence in a proper way. For conducting a fair trial, proper opportunity is required to be given to the accused, but in the instant case, the petitioner has been deprived of such fair opportunity.

9. In the instant case, when the petitioner's opportunity for conducting cross-examination with the prosecution witnesses was closed by the trial Court, he filed an application under Section 311 Cr.P.C., however, the said application was also rejected by the trial Court. The Court below has ignored the important provisions of law relating to summoning and examining of the witnesses, contained under Section 311 Cr.P.C. and Section 138 of the Evidence Act. For ready reference both provisions are reproduced as under:





“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.”

“138. Order of examinations.—Witnesses shall be first examined-in-chief then (if the adverse party so desires) cross-examined, then (if the party calling him so desires) re-examined.

The examination and cross-examination must relate to relevant facts but the cross-examination need not be confined to the facts to which the witness testified on his examination-in-chief.

Direction of re-examination.—The re-examination shall be directed to the explanation of matters referred to in cross-examination; and if new matter is, by permission of the court, introduced in re-examination, the adverse party may further cross-examine upon that matter.”

10. A conspicuous reading of Section 311 CrPC would show that widest of the powers have been invested with the courts when it comes to the question of summoning a witness or to recall or re-examine any witness already examined. A reading of the provision shows that the expression “any” has been used as a prefix to “court”, “inquiry”, “trial”, “other proceeding”, “person as a witness”, “person in attendance though not summoned as a witness”, and “person already examined”. By using the said expression “any” as a prefix to the various expressions mentioned above, it is ultimately stated that all that was required to be satisfied by the court was only in relation to such evidence that appears to the court to be essential for the just decision of the case. Section 138 of the Evidence Act, prescribed the order of examination of a





witness in the court. The order of re-examination is also prescribed calling for such a witness so desired for such re-examination. Therefore, a reading of Section 311 CrPC and Section 138 Evidence Act, insofar as it comes to the question of a criminal trial, the order of re-examination at the desire of any person under Section 138, will have to necessarily be in consonance with the prescription contained in Section 311 CrPC. It is, therefore, imperative that the invocation of Section 311 CrPC and its application in a particular case can be ordered by the court, only by bearing in mind the object and purport of the said provision, namely, for achieving a just decision of the case as noted by us earlier. The power vested under the said provision is made available to any court at any stage in any inquiry or trial or other proceeding initiated under the Code for the purpose of summoning any person as a witness or for examining any person in attendance, even though not summoned as witness or to recall or re-examine any person already examined. Insofar as recalling and re-examination of any person already examined is concerned, the court must necessarily consider and ensure that such recall and re-examination of any person, appears in the view of the court to be essential for the just decision of the case. Therefore, the paramount requirement is just decision and for that purpose the essentiality of a person to be recalled and re-examined has to be ascertained. To put it differently, while such a widest power is invested with the court, it is needless to state that exercise of such power should be made judicially and also with extreme care and caution.





11. The Hon'ble Apex Court in the case of **Rajaram Prasad**

Yadav vs. State of Bihar & Anr. reported in **(2013) 14 SCC**

461 has formulated the following principles in para 17 which are required to be kept in mind while dealing with an application filed under Section 311 Cr.P.C.: -

"17. From a conspectus consideration of the above decisions, while dealing with an application under Section 311 CrPC read along with Section 138 of the Evidence Act, we feel the following principles will have to be borne in mind by the courts:

17.1. Whether the court is right in thinking that the new evidence is needed by it? Whether the evidence sought to be led in under Section 311 is noted by the court for a just decision of a case?

17.2. The exercise of the widest discretionary power under Section 311 CrPC should ensure that the judgment should not be rendered on inchoate, inconclusive and speculative presentation of facts, as thereby the ends of justice would be defeated.

17.3. If evidence of any witness appears to the court to be essential to the just decision of the case, it is the power of the court to summon and examine or recall and re-examine any such person.

17.4. The exercise of power under Section 311 CrPC should be resorted to only with the object of finding out the truth or obtaining proper proof for such facts, which will lead to a just and correct decision of the case.

17.5. The exercise of the said power cannot be dubbed as filling in a lacuna in a prosecution case, unless the facts and circumstances of the case make it apparent that the exercise of power by the court would result in causing serious prejudice to the accused, resulting in miscarriage of justice.

17.6. The wide discretionary power should be exercised judiciously and not arbitrarily.

17.7. The court must satisfy itself that it was in every respect essential to examine such a witness or to recall him for further examination in order to arrive at a just decision of the case.





17.8. The object of Section 311 CrPC simultaneously imposes a duty on the court to determine the truth and to render a just decision.

17.9. The court arrives at the conclusion that additional evidence is necessary, not because it would be impossible to pronounce the judgment without it, but because there would be a failure of justice without such evidence being considered.

17.10. Exigency of the situation, fair play and good sense should be the safeguard, while exercising the discretion. The court should bear in mind that no party in a trial can be foreclosed from correcting errors and that if proper evidence was not adduced or a relevant material was not brought on record due to any inadvertence, the court should be magnanimous in permitting such mistakes to be rectified.

17.11. The court should be conscious of the position that after all the trial is basically for the prisoners and the court should afford an opportunity to them in the fairest manner possible. In that parity of reasoning, it would be safe to err in favour of the accused getting an opportunity rather than protecting the prosecution against possible prejudice at the cost of the accused. The court should bear in mind that improper or capricious exercise of such a discretionary power, may lead to undesirable results.

17.12. The additional evidence must not be received as a disguise or to change the nature of the case against any of the party.

17.13. The power must be exercised keeping in mind that the evidence that is likely to be tendered, would be germane to the issue involved and also ensure that an opportunity of rebuttal is given to the other party.

17.14. The power under Section 311 CrPC 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 care, caution and circumspection. The court should bear in mind that fair trial entails the interest of the accused, the victim and the society and, therefore, the grant of fair and proper opportunities to the persons concerned, must be ensured being a constitutional goal, as well as a human right."



12. Keeping in view the above principles, this Court is of the considered view that re-summoning of the Prosecution Witnesses PW-1 Deepa and PW-2 Sunita is necessary for just and fair decision of the case.

13. Hence, the impugned orders dated 03.04.2024 and 10.05.2024 passed by the Court below are not sustainable and are liable to be and are hereby quashed and set-aside. The trial Court is directed to re-summon the above two Prosecution Witnesses, i.e., PW-1 Deepa and PW-2 Sunita on the next date and provide an opportunity to the petitioner to cross-examine the above two Prosecution Witnesses.

14. Accordingly, the misc. petition stands allowed. Stay application and all pending application(s), if any, also stand disposed of.

(ANOOP KUMAR DHAND),J

Aayush Sharma /6

