

(2006) 03 JH CK 0008**Jharkhand High Court****Case No:** Criminal M.P. No. 177 of 2005

Ganesh Roy

APPELLANT

Vs

State of Jharkhand and Another

RESPONDENT

Date of Decision: March 28, 2006**Acts Referred:**

- Companies Act, 1956 - Section 630
- Criminal Procedure Code, 1973 (CrPC) - Section 311, 482

Citation: (2006) CriLJ 4198 : (2006) 2 JCR 437 : (2006) 43 AllIndCaS 863 : (2006) 2 AIRJharR 68 : (2007) 5 RCR(Criminal) 346**Hon'ble Judges:** D.K. Sinha, J**Bench:** Single Bench**Advocate:** S.K. Dwivedi, for the Appellant; APP and G.M. Mishra and Indrajit Sinha, No. 2, for the Respondent**Judgement**

D.K. Sinha, J.

The petitioner has preferred this petition u/s 482, Cr PC for quashing of the order impugned dated 15.12.2004 passed by the Sessions Judge, Jamshedpur in Cr. Revision No. 107/04 arising out of CI Case No. 1152/2000 pending In the Court of Special Judge, Economic Offence, Jamshedpur whereby and whereunder the petition of the petitioner u/s 311, Cr PC for further cross-examination of PW 1 Sharda Nand was rejected by the trial Court as well as the Revisional Court aforesaid.

2. The brief fact of the case is that a complaint was filed by the Opposite Party No. 2 for the eviction of the petitioner on his termination of service from the Company w.e.f. 4.9.1993 for committing offence u/s 630 of the Companies Act in the Court of Special Judge, Economic Of fence at Jamshedpur for the eviction of the quarter which was allotted to the petitioner on 6.10.1989 for the efficient performance of duties and convenience. But after termination of the petitioner the contract between the employer and the employee also terminated since the petitioner

ceased to be an employee of the Company. In course of trial before the said Court several witnesses including one Sharda Nand was produced and examined on behalf of the Opposite Party No. 2 as PW 1 and was cross-examined but it was detected later on by the petitioner that said PW 1 could not be examined on the point of allotment letter of the quarter which was provided by the Company and thereafter a petition was filed on behalf of the petitioner on 9.6.2004 u/s 311 of the Code of Criminal Procedure before the Special Judge with the prayer to recall PW 1 Sharda Nand for further cross-examination on the point of Ext. 1 which was the allotment letter but the same was rejected by the Special Judge on 21.6.2004 and by the learned Sessions Judge in Criminal Revision on 15.12.2004.

3. The learned counsel for the petitioner submitted that the trial Judge as well as the Sessions Judge without appreciating the matter and without taking into consideration the prejudice which would cause to the petitioner rejected the above petition on the flimsy grounds that the petitioner did not disclose about the question to be put whereas the petitioner had consistently stated that he wanted to further cross-examine PW 1 only on Ext. 1 which was allotment letter.

4. Learned counsel for the petitioner further submitted that the statutory law confers power in absolute terms to be exercised at any stage of trial to recall a witness already examined by performing duty and obligation to provide just decision of the case. Section 311, Cr PC calls for no limitation with regard to the stage to which the powers u/s 311 may be exercised and therefore it may be exercised any time.

5. The only question for consideration is whether the petitioner's petition u/s 311, Cr PC is tenable before the trial Court for further cross-examination of the witness on Ext. 1 which was allotment letter and basis for launching prosecution.

6. It was held by the Supreme Court in Rajendra Prasad Vs. The Narcotic Cell Through its Officer in Charge, Delhi . that:

We cannot therefore accept the contention of the appellant as a legal proposition that the Court cannot exercise power of resummoning any witness if once that power was exercised, nor can the power be whittled down merely on the ground that the prosecution discovered laches only when the defence highlighted them during final arguments. The power of the Court is plenary to summon or even recall any witness at any stage of the case if the Court considers it necessary for a just decision. The steps which the trial Court permitted in this case for resummoning certain witnesses cannot therefore be spurned down or frowned at.

7. Learned counsel for the Opposite Party No. 2 simply raised the point that the petitioner who was being criminally prosecuted u/s 630 of the Companies Act, 1956 having intention to linger the matter for a long period brought about the petition u/s 311, Cr PC which was rejected by the trial Court as well as the Revisional Court.

8. Taking the considered view, this Court finds that the petitioner had preferred petition u/s 311, Code of Criminal Procedure for the recall of the witness PW 1 to further cross-examine on the point of allotment which was inadvertently left as stated on behalf of the petitioner.

9. Admittedly, no sample of questions were set forth before the trial Judge but it cannot be inferred that it was brought about with the intention to linger the matter. In view of the decisions referred to above and propounded by the Hon"ble Apex Court there appears merit in the petition u/s 482, Cr PC and hence is allowed. The order impugned of the trial Court as well as Revisional Court whereby and whereunder a petition u/s 311, Cr PC has been rejected is hereby set aside.

10. The trial Court below is directed to issue summons to the PW 1 for cross-examination only on the Ext. 1 soon after the presentation of the certified copy of this order within 15 days and allow the petitioner Ganesh Roy to have further cross-examination and re-examination if the prosecution opts for that and conclude the trial positively within three months.

11. With this observation this petition is disposed of.