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**(2008) 09 JH CK 0066**  
**Jharkhand High Court**  
**Case No:** None

State

APPELLANT

Vs

N.S. Sharma and Others

RESPONDENT

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**Date of Decision:** Sept. 4, 2008

**Acts Referred:**

- Criminal Procedure Code, 1973 (CrPC) - Section 311, 313
- Penal Code, 1860 (IPC) - Section 120B, 409, 471
- Prevention of Corruption Act, 1988 - Section 5

**Hon'ble Judges:** Amareshwar Sahay, J

**Bench:** Single Bench

**Final Decision:** Dismissed

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**Judgement**

Amareshwar Sahay, J.

When this application was taken up Mr. Prabir Chatterjee, learned Counsel appearing for the Opposite Parties stated that so far as the Opposite Party Nos. 2 and 3 namely, U. S. Prasad and S. K. Roy Choudhary are concerned, they have been wrongly made parties in this proceeding as the Hon"ble High Court has already quashed the prosecution against them vide order dated 26<sup>th</sup> June 1990 in Cr. Misc. No. 1143 of 1988 (R). A photocopy of the certified copy of the judgment passed in the aforesaid Cr. M. P. No. 1143 of 1988 (R) has been produced before me from which it appears that in fact the order taking cognizance as well as the criminal prosecution against them in R.C. Case No. 11(A)/86 (D) has already been quashed.

At this juncture, Mr. D. K. Bharti, learned Counsel for the petitioner states that due to bonafide mistake the Opposite Party Nos. 2 and 3 have been made parties in this case and therefore, he prays for and is allowed to delete their names from the array of the Opposite Parties.

2. The learned Counsel for the petitioner as well as the learned Counsel appearing on behalf of the Opposite Parties have been heard on the merit of the quashing

application.

3. In this application the petitioner, C.B.I is challenging the order dated 05.08.2003 whereby the Special Judge, C.B.I, Dhanbad has rejected the petition filed by the C.B.I for the offence u/s 311 Cr. P.C. for summoning the remaining charge sheeted witnesses, who could not be examined by the prosecution before the case of the prosecution was closed.

4. The facts in short leading to the present application are that the C.B.I., registered R.C. Case No. 11 (A)/86 (D) against the accused persons including the petitioner for the offence under Sections 409, 120B and 471 of the Indian Penal Code as well as u/s 5(2) and 5(1) (c), (d) of the Prevention of the Corruption Act. The allegation against the accused persons was that in conspiracy they had withdrawn a sum of Rs. 60820/- on the pretext of making payment to M/s Dutta Decorators, Hirapur, Dhanbad, but the amount was never paid to him nor any function was held in the relevant year in which the services of the M/s Dutta Decorators was alleged to have been utilized. It was further alleged that the agent and the Manager of Barari colliery put up a not sheet on 24.12.1981 seeking financial sanction of Rs. 12052/- on account of incentive payment to the workers for the month of June, 1980 as in that period there was record production of coal. It is alleged that the incentive payment had already made to the workers and when this matter was detected then the money withdrawn had been attempted to be regularized on account of entertainment of the staff welfare and as such the finance officer recommended to the General Manager for approval which was accepted and payment was made on the basis of the vouchers. It was further alleged that the Opposite Party No. 1, Mr. N.S. Sharma, the time keeper prepared the vouchers for payment to M/s Dutta Decorators of Rs. 60,820/- and the remaining amount of Rs. 12,052/- on account of purchase of sweets. It is further alleged that the payment was shown on 03.04.1982 whereas on the payment voucher the date of payment was shown to be 05.04.1982. Therefore, it is alleged that Rs. 60,820/- was paid on the basis of forged documents, which was approved by the Manager.

5. Subsequently, the C.B.I. submitted charge sheet on the basis of which cognizance of offence was taken by the Special Judge, C.B.I, Dhanbad, thereafter the charges were framed on 05.08.1991. As it appears from the material on record that the prosecution examined its witnesses and the last prosecution witness was examined on 18.08.1998. Since thereafter no witness was being produced on behalf of the prosecution in spite of several indulgence given to the prosecution and, therefore, the case of the prosecution was ultimately closed on 23.04.1999 relying on the decision of the Supreme Court in the Case of Raj Deo Sharma v. The State of Bihar reported in 1998 (4) PLJR 57 (S.C). After closure of the prosecution, the statement of the accused persons was recorded u/s 313 Cr. P.C. on 15.12.2000. It appears that against the order of closure of the prosecution evidence, the prosecution i.e. C.B.I filed Cr. Misc. No. 5934 of 1999 (R) before this Court which was dismissed on

27.09.2000 by single bench of this Court. The order passed by the Single Judge in the aforesaid Cr. Miscellaneous became final and the same was not challenged by the C.B.I. before any other forum.

6. Thereafter as it appears that a petition was filed before the C.B.I. Special Judge purporting to be a petition u/s 311 Cr. P.C. praying therein to issue summons against the remaining five charge sheeted prosecution witnesses, who could not be examined on behalf of the prosecution. The said petition of the C.B.I. for summoning the witnesses u/s 311 Cr. P.C. has been rejected by the impugned order dated 05.08.2003 by the Special Judge, C.B.I.-cum-1<sup>st</sup> Additional Sessions Judge, Dhanbad.

7. Mr. Deepak Kumar Bharti, learned Counsel appearing for the petitioner submitted that the evidence of the prosecution was closed by the Special Judge solely relying on the decision of the Supreme Court in the Case of Raj Deo Sharma v. the State of Bihar reported in 1998 (4) PLJR which laid down that the prosecution cannot be allowed to continue for more than three years from the date of framing of charge but the said decision in the case of Raj Deo Sharma (Supra) was reversed by the Supreme Court in the later decision in the case of [P. Ramachandra Rao Vs. State of Karnataka](#), and, therefore, the petitioner filed an application u/s 311 Cr. P.C. in the Court below for summoning the remaining charge sheeted prosecution witnesses.

8. On the other hand, Mr. Chatterjee, learned Counsel appearing for the Opposite Parties submitted that the prosecution was given sufficient indulgence for producing the witnesses for about eight years since the date of framing of charge which was framed on 05.08.1991 and the evidence of the prosecution was closed on 23.04.1999, therefore, the prosecution took more than eight years to examine eight of its charge sheeted witnesses. After the evidence of the prosecution was closed, the statement of the accused persons were recorded u/s 313 Cr. P.C.

9. From the facts noticed above, it is also clear that against the order of closure of evidence of the prosecution case, the petitioner filed quashing application, challenging the said order before this Court which was also dismissed and also became final. Therefore, if any interference is made by this Court in this application at this stage then that would amount to the reversing or setting aside of the order of the closure of the evidence of the prosecution which has now become final.

10. Section 311 Cr. P.C. empowers the Court to summon any witnesses or examine any person in attendance though not summoned as witness, or recall and re-examine any person already examined. It is for the trial Court to exercise its jurisdiction u/s 311 Cr. P. C. if it is of the opinion that examination of any of such witnesses is essential for the jurisdiction of the case. It Is settled law that in exercise of power u/s 311 Cr. P.C. the party cannot be allowed to fill up the lacuna.

11. From the impugned order, I find that in the instant case the learned Special Judge has given more than sufficient opportunity to the prosecution to examine its

witnesses.

12. In view of the facts and circumstances of the case, I hold that the learned Trial Court has rightly rejected the prayer of the petitioner for summoning the remaining charge sheeted witnesses.

Accordingly, having found no merit, this application is dismissed.