

(2016) 08 JH CK 0152

JHARKHAND HIGH COURT

Case No: Criminal Revision No. 849 of 2016.

Rajendra Kumar Singh, son of Sri
Muni Singh Resident of Quarter
No. F/55, Near ICC Factory, PO
and PS - Jharia, District -
Dhanbad - Petitioner @HASH
State of Jharkhand through C.B.I.
- Opposite Party

APPELLANT

Vs

RESPONDENT

Date of Decision: Aug. 17, 2016

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 311

Citation: (2016) 4 ECrC 377

Hon'ble Judges: Ravi Nath Verma, J.

Bench: Single Bench

Advocate: Mr. Mukesh Bihari Lal, Advocate, for the Petitioner; Mr. Kailash Prasad Deo, Advocate, for the C.B.I.

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

Mr. Ravi Nath Verma, J. - The petitioner has questioned the legality of the order dated 23.06.2016 passed by Additional Sessions Judge-IVth-cum-Special Judge, C.B.I., Dhanbad in R.C. Case no. 9(A)/2003-D whereby and where under the petition filed under Section 311 of the Code of Criminal Procedure (in short "the Code") at the instance of the prosecution has been allowed.

2. The background facts need to be noted in brief is that at the instance of one Kaila Bhuiya, a General Mazdoor of B.C.C.L., a complaint case was lodged in the office of S.P, C.B.I., Dhanbad that this petitioner Rajendra Kumar Singh demanded illegal

gratification of Rs. 500/- for appearing as essential witness before the Jharia Post Office for his identification to withdraw his deposit money from R.D. Account. Thereafter, the said complaint was lodged under Section 7 of the Prevention of Corruption Act.

3. After investigation, the prosecution i.e. C.B.I. submitted the charge-sheet. After framing of charges, the prosecution as well as defence examined their witnesses. Thereafter a petition at the instance of the prosecution was filed under Section 311 of the Code with prayer that several exhibits are though on record but could not be exhibited and for marking those documents, the examination of PW 8 - Deobrat Narayan Singh and one Ashok Saw is essential for the just decision of the case. The Special Judge after hearing both the parties allowed the said petition as indicated above. Hence, this revision at the instance of the defence-accused.

4. Learned counsel Mr. M.B. Lal appearing for the petitioner assailing the order impugned as bad in law seriously contended that the court below erred in allowing to recall the witness to fill up the vital lacuna in the prosecution case and though the trial continued for 13 years but during that period, no such step was taken for either recalling of the witness or to get those documents exhibited and when after closure of the evidence of both parties and the case was fixed for argument, the said petition for recall was filed and if the same is allowed, it will certainly prejudice the defence.

5. Contrary to the aforesaid submissions, learned counsel Mr. Deo appearing for the C.B.I. in support of the order impugned submitted that it was simply a fall out of an oversight committed by the public prosecutor in the court below and it cannot be equated with fill up of lacuna and the court below rightly exercised its jurisdiction and directed to recall witness PW-8 including one witness Ashok Saw.

6. Before I enter into the veils of submissions of the learned counsels, a reference of Section 311 of the Code is necessary for the proper adjudication of the issue involved between the parties. The said provision clearly contemplates that the court may at any stage of an inquiry, trial or other proceeding under the 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 reexamine any such person if his evidence appears to it to be essential to the just decision of the case.

7. From bare perusal of the aforesaid provision, it is manifestly clear that the said provision is divided into two parts. In the first part, the word "may" has been used but in the second part, the legislature has intentionally used the term "shall". The first part gives purely discretionary power to a criminal court but the second part of it is an obligation: it is that the court shall summon and examine all persons whose evidence appears to be essential for the just decision of the case. The very object of this underlying Section 311 of the Code is that there may not be any failure of justice

on account of mistake by either party in bringing the valuable evidence on record. The only determinative factor is whether it is essential to bring on record the valuable evidence and this can be done at any stage of the inquiry or trial or proceeding under the Code. The first part gives a complete discretion to the court but obviously the said discretion must be judicious and cannot be exercised by the court without recording its satisfaction and applying the judicial mind.

8. I have gone through the order impugned and find that those documents are already on record but could not be marked as exhibits at the time when PW-8, who was competent, was examined.

It is true that the prayer was made when the case was fixed for argument but merely on that ground and for the just decision of the case, the prayer cannot be denied. The prayer can be made by either of the party at any stage of the trial. Considering the scope of Section 311 of the Code, it does not appear to be a case where any interference is called for. I also do not find any illegality or impropriety in the order impugned.

9. Hence, the revision application, being devoid of any merit, is, hereby, dismissed. However, if the prosecution examines those two witnesses, the defence should also be given an opportunity to cross-examine those witnesses. The non-interference in the order impugned shall not be construed as I have expressed any opinion on the merit of the case.