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**(2002) 02 MP CK 0040**

**Madhya Pradesh High Court**

**Case No:** M.Cr.C. No. 791 of 2002

Deen Dayal Soni

APPELLANT

Vs

Smt. Pancho Bai and Another

RESPONDENT

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**Date of Decision:** Feb. 11, 2002

**Acts Referred:**

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

**Citation:** (2002) 2 MPHT 112 : (2002) 2 MPLJ 523 : (2002) 3 RCR(Criminal) 357

**Hon'ble Judges:** N.S. Azad, J

**Bench:** Single Bench

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### **Judgement**

@JUDGMENTTAG-ORDER

Narain Singh "Azad", J.

On the report of this petitioner the respondents are facing Criminal Case bearing No. 2673/96 in the Court of C.J.M. Jabalpur for offence u/s 420/34 of the I.P.C. After recording the statement of this petitioner the non-applicants moved an application u/s 311 of the Cr.P.C. for recalling this petitioner to put questions, on the report of the handwriting expert, which was not available at the time of recording the statement of this petitioner. Turning down the objections raised on behalf of the prosecution, the learned C.J.M. allowed the petition by order dated 20th of March 2001. The Cr.R. No. 160/01 filed by this petitioner, challenging the aforesaid order dt. 20th of March 2001 also stood disallowed and rejected on 6th of December 2001 by A.S.J. Jabalpur.

It is submitted by Shri Shrivastav that it is only when the accused is called upon to enter his defence u/s 243 of the Cr.P.C. that a document may be permitted to be taken on record, and not at any earlier stage.

Section 311 of the Cr.P.C. reads as under :-

"Any Court may, at any stage of any inquiry, trial or other proceedings 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."

On this provision contained in Section 311 of the Cr.P.C., it is the settled position of law that u/s 311 of the Cr.P.C., already examined witness, may be recalled at any time for further cross-examination. The perusal of order dated 20th of March 2001, passed by learned C.J.M. Jabalpur reveals that the questioned document, the sale deed is the basis of not only criminal prosecution, but the civil litigation also in which report of handwriting expert is obtained. The non-applicants sought recalling of petitioner/complainant to ask questions pertaining to the report of the handwriting expert. It is opined by the learned C.J.M. so also Revisional Court that the questions pertaining to report handwriting expert may be put to petitioner, in further cross-examination. So far as taking the report of handwriting expert on record in defence is concerned that would be a matter of consideration by Trial Court at the time of recross-examination, when the same is sought to be taken on record, on behalf of non-applicants.

So far as recalling the petitioner for putting questions in respect of report of handwriting expert is concerned, the order passed by the learned C.J.M. so also the Revisional Court, are found to be perfectly lawful which do not cause prejudice to the petitioner.

Thus in the absence of there being any likelihood of grave miscarriage of justice or violation of any bar created in any provision this petition is found to be without merits, which is disallowed and rejected at the state of motion hearing.