

ORISSA HIGH COURT: CUTTACK

CRLMC No. 1571 of 2021

An application under section 482 of the Code of Criminal Procedure, 1973 in connection with V.G.R. Case no.6 of 2014 pending on the file of learned Special Judge (Vigilance), Keonjhar.

Pradeep Santi Petitioner

-Versus-

State of Odisha (Vigilance) Opp. Party

For Petitioner : M/s. D.K. Mohanty and
P.R. Behera, Advocates

For Opp. Party: Mr. N. Maharana,
Addl. Standing Counsel for Vigilance.

P R E S E N T:

THE HONOURABLE MR. JUSTICE SASHIKANTA MISHRA

Date of hearing: 26.10.2021 :: Date of Order: 03.11.2021

SASHIKANTA MISHRA, J. The petitioner has filed this application under Section 482 Cr.P.C. seeking to quash the order dated 03.09.2021 (Annexure-3) passed by the

learned Special Judge (Vigilance), Keonjhar in V.G.R. No. 6 of 2014, whereby his prayer for summoning a person as witness was rejected.

2. Bereft of unnecessary details, the facts of the case are that the petitioner is an accused in the above mentioned case registered on the basis of an FIR lodged by one Antaryami Sahoo before the Vigilance P.S., Balasore on 26.05.2014. After closure of evidence from the side of prosecution as well as defence when the matter was posted for hearing of arguments, the petitioner filed a petition on 03.09.2021 (Annexure-2) under Section 311 of Cr.P.C. with prayer to summon one Kamal Lochan Mohanty, working as Executive Engineer at Anandapur Electrical Division, to adduce evidence in the case. The said petition was rejected vide order dated 03.09.2021, which is impugned in the present application.

3. Heard Mr. D.K. Mohanty, learned counsel for the petitioner and Mr. N. Maharana, learned Addl.

Standing Counsel for Vigilance through hybrid mode and perused the record.

4. It is argued by Sri D.K. Mohanty that the petition under Section 311 was rejected by the court below without application of mind and on untenable reasons. It is further submitted that the prosecution having relied upon Ext.-11 and the proposed witness being a signatory to the said document, is a material witness but was deliberately not cited as a witness in the charge sheet by the prosecution. He further submitted that the evidence of the proposed witness is absolutely vital for the defence and also shall enable the court to arrive at a just decision in the case. According to Mr. Mohanty, learned court below did not consider the above facts in the right perspective and went on to reject the petition on grounds that are not germane to the issue. Sri Mohanty further argued that law permits the court to summon any person as a witness at any stage of the proceeding so as to arrive at a just decision in the case.

But by rejecting the application of the petitioner, the concept of fair trial has been given a complete go bye.

To fortify his contentions, Mr. Mohanty has cited the following decisions:

Rabindra Kumar Dey vs. State of Orissa, AIR 1977 SC 170; ***Mohan Lal Shamlal Soni vs. Union of India and another***, AIR 1991 SC 1346; ***A. Subair vs. State of Kerala***, (Criminal Appeal No. 639 of 2004); ***Ram Jeet and Ors. vs. The State***, AIR 1958 All 439; and ***Emperor vs. Vasudeo Balwant Gogte***, AIR 1932 Bom. 279.

5. Per contra, Mr. N. Maharana, learned Addl. Standing Counsel for the Vigilance Department has contended that Section 311 Cr.P.C. is not intended to fill up the lacunae in the case of a party and it is only if the court is satisfied that the evidence of a particular witness is necessary for just and fair decision of the case would the power under such provision be exercised. Referring to the facts of the present case, Mr. Maharana further

argued that the petitioner filed the petition under Section 311 Cr.P.C. long after closure of evidence from both sides and when the matter was posted for hearing arguments and hence it is nothing but a tactic employed by him to delay conclusion of the trial. Mr. Maharana further argued that even otherwise the document in question having already been admitted into evidence from the side of the prosecution as Ext.11 without any objection from the side of defence, there is no justified reason to summon the proposed witness to prove the same fact again. Sri Maharana has also cited the following decisions to fortify his contentions:

Swapan Kumar Chatterjee vs. Central Bureau of Investigation; (2019) 14 SCC 328; **State of Haryana vs. Ram Mehar and others,** (2016) 8 SCC 762; **Mannan Sk & Ors. vs. State of West Bengal & Anr.** AIR (2014) SC 2950; **Dara Singh @ Rabindra Kumar Pal and others vs. Republic of India,** (2003) 26 OCR 124; **Ratanlal vs. Prahlad Jat and others** (2017) 9 SCC

340; and **Rajaram Prasad Yadav vs. State of Bihar and another**, (2013) 14 SCC 461.

6. Having heard the rival submissions and the case laws as noted above, this court observes at the outset that the position of law as regards the provision under Section 311 Cr.P.C. as laid down in the cases referred to by both the parties is not in dispute and hence, it is not felt necessary to refer to each of the said case laws individually. However, the law in this regard can be summed up as follows:

(i) The court has wide powers to summon any person to adduce evidence in a case at any stage of the proceeding.

(ii) Such power has to be exercised if it is felt necessary to arrive at a fair and just decision of the case.

7. As has been held in **Mohan Lal Shamlal Soni** (supra), a witness can be summoned even after closure of defence arguments. But, the paramount

consideration for the court is to see if the examination of a witness is essential for just decision of the case. The facts of the case at hand may now be tested in the above legal background.

8. There is no dispute that the case before the trial court is pending at the stage of hearing arguments after closure of evidence from both sides. A perusal of the petition filed under Section 311 Cr.P.C. (Annexure-2) reveals that the proposed witness, namely, Kamal Lochan Mohanty had signed on the document, marked as Ext.11, but was not cited as a witness in the charge-sheet. The petition does not disclose as to how or for what reason the evidence of the said Kamal Lochan Mohanty is necessary, when the document on which he has purportedly signed, has already been admitted into evidence without any objection from the side of defence or how without such examination it would not be possible to arrive at a just and fair decision in the case.

9. That apart, there is no explanation as to why the petition was filed so belatedly, inasmuch as if according to the defence, the evidence of the proposed witness is necessary for a just decision of the case and the prosecution had deliberately not cited him as a witness, then it was open to the defence to summon him as a defence witness at the appropriate time. The same not having been done at the relevant time, it becomes difficult for the court to accept that examination of the said person is absolutely vital for the case. Even otherwise, the contention of learned counsel for the petitioner that generally at the time of preparation for argument it comes to mind as to who has been omitted to be called as witness cannot in any manner be accepted as a plausible explanation for the admitted delay in filing the petition nor can such an explanation be countenanced within the four corners of the provision under Section 311 of Cr.P.C.

10. All the above factors thus cumulatively persuade this court to hold that there is no compelling necessity to summon the proposed witness to adduce evidence in the case at this belated stage. As such, this court finds no infirmity or illegality in the impugned order so as to interfere therewith.

11. The CRLMC is, therefore dismissed.

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Sashikanta Mishra,
Judge

Orissa High Court, Cuttack
The 3rd November, 2021/ A.K. Rana

