

IN THE HIGH COURT OF JHARKHAND AT RANCHI
Cr. M.P. No.1129 of 2013

Kamal Kumar Shome @ Kamal Kumar Shom
@ K.K. Shome Petitioner

Versus

1. The State of Jharkhand
2. Manoj Kumar Gupta Opposite Parties

CORAM : HON'BLE MR. JUSTICE H. C. MISHRA

For the Petitioner : Mr. Samir Kumar Lall , Advocate
For the State : A.P.P.

5/30.06.2014 Heard learned counsel for the petitioner and learned counsel for the State.

2. Petitioner is aggrieved by the order dated 1.3.2013 passed by the learned Sessions Judge, Jamshedpur, in Cr. Revision No.263 of 2012, whereby the revision filed against the order dated 2.8.2012 passed by Sri R. K. Singh, learned Judicial Magistrate, Jamshedpur, in C-1 Case No.1350 of 2009, by which the petition filed by the petitioner under Section 311 of the Cr.P.C., had been rejected by the Trial Court, was dismissed by the Revisional Court below.

3. From perusal of the impugned orders, it appears that in the said complaint case that the complainant was examined and he was cross-examined by the defence at length on 19.4.2010 and 12.7.2010 and thereafter he was discharged. The other witnesses of the complainant were also examined and discharged and the case of the complainant was closed. Thereafter the case was fixed for recording the statement of the accused under Section 313 of the Cr.P.C., when the application was filed on 7.4.2012 for recalling the complainant under Section 311 of the Cr.P.C., stating that some questions were left to be put to the complainant, for which he should be recalled for his cross-examination. The application was dismissed by the Trial Court by order dated 2.8.2012 passed in C-1 Case No.1350 of 2009 holding that the complainant was cross-examined at length and he was discharged. The application filed under Section 311 of the Cr.P.C. was rejected holding that the accused was not allowed to fill up the lacuna. The revision filed against the said order was also rejected by the Revisional Court below, holding that sufficient opportunity was given to the petitioner to cross examine the witness.

4. It appears from the impugned orders passed by both the Courts below that what questions were to be asked by the accused petitioner to the complainant, were not disclosed before the Courts below. The revision application filed before the Revisional Court has also been brought on record as Annexure -2 to this application, which also does not disclose anything as to why the recall of the complainant was required for his cross-examination, except stating that some questions were left to be asked.

5. Learned counsel for the petitioner has submitted that the impugned orders passed by the Courts below are absolutely illegal, and has placed reliance upon the decision of the Hon'ble Supreme Court of India in **Rajendra Prasad Vs. Narcotic Cell**, reported in (1999) 6 SCC 110, wherein it has been held that any lapses or mistake during the conduct of a case cannot be understood as a lacuna, which the Court cannot fill up and the application filed under Section 311 of the Cr.P.C., was allowed by the Supreme Court. Learned counsel has also placed reliance upon the decision of this Court in **Ganesh Roy Vs. State of Jharkhand & Anr.**, reported in 2006 (2) JCR 437(Jhr), wherein also relying upon the aforementioned decision of the Supreme Court, the application filed under Section 311 of the Cr.P.C. was allowed.

6. Upon going through both these decisions, it is apparent that questions to be put, on the basis of which the witness was sought to be recalled, was informed to the Court and on that basis it was found that the recall of the witness was essential in the case, and the case was made out for recalling of the witnesses for his examination. But in the present case, I find that nothing has been brought on record to show that what questions were to be put to the complainant, nor the same had been brought before the Courts below. The Courts below have rightly held that in view of the fact that the complainant was cross-examined at length on 19.4.2010 and 12.7.2010, sufficient opportunity was given to cross examine the witness.

7. This apart, Section 311 of the Cr.P.C., reads as follows:-

“311. Power to summon material witness, or examine person present.- Any Court may, at any stage of any inquiry, trial or other proceeding 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.”

Thus, from bare perusal of this Section, it is apparent that it is the substantive satisfaction of the Court. and if it is satisfied that the recall and re-examination of a witness is essential for the just decision of the case, then only the witness is to be recalled.

8. In the present case, I find that belated application filed by the petitioner has been rightly rejected by the Courts below, holding that sufficient opportunity was given to the petitioner to cross-examine the witness, and he cannot be allowed to fill up the lacuna. As such, I do not find any illegality in the impugned order. There is no merit in this application and the same is accordingly, dismissed.

(H. C. Mishra, J.)