

***In the High Court of Jharkhand at Ranchi***

**Cr.M.P.No.186 of 2014**

Aloke Kumar Gupta @ Alok Kr. Gupta.... Petitioner

V E R S U S

State of Jharkhand .....Opposite Party

CORAM: **HON'BLE MR. JUSTICE R.R.PRASAD**

For the Petitioner :Mr.Lukesh Kumar

For the State :A.P.P

02/ 31.03.14. This application is directed against the order dated 19.9.2013 passed in Complaint Case No.38 of 2006 whereby and whereunder petition filed by the complainant under Section 311 of the Code of Criminal Procedure has been allowed.

Learned counsel appearing for the petitioner submits that the petitioner is an accused in Complaint Case no.38 of 2006. In that case, the complainant did not produce any of the witnesses and therefore, the court closed the case of the complainant. Thereafter an application under Section 311 of the Code of Criminal Procedure was filed which was allowed subject to payment of cost of Rs.500/-. Since the cost has been awarded, the complainant preferred a Revision application before the revisional court whereby the revisional court extended the time which was there in the order dated 19.9.2013 subject to payment of cost as had been ordered by the trial court.

Being aggrieved with the order passed by the trial court and also by the revisional court, the petitioner has preferred this application.

Mr.Lukesh Kumar, learned counsel appearing for the petitioner submits that the court should not have allowed the application filed under Section 311 of the Code of Criminal Procedure for the reason that not a single witness had been adduced by the complainant before the case of the complainant was closed.

Learned counsel in support of his submission has referred to a decision rendered in a case of ***Narayan vs. State of Maharashtra (2001 Cri L.J.527).***

Having heard learned counsel appearing for the petitioner and learned counsel appearing for the State, it does appear that when the case of the complainant was closed, an application was filed under Section 311 of the Code of Criminal Procedure which was allowed presumably for the reason that if the complainant is not allowed to examine his witnesses, there would be miscarriage of justice and since the discretion has been exercised by the trial court, I am not inclined to interfere with the orders which are impugned here in this application.

So far as the decision referred to on behalf of the petitioner is concerned, that decision has been given on the facts and circumstances of the case. However, their Lordships have also observed that the exercise of the discretion under Section 311 of the Code of Criminal Procedure would depend on facts and circumstances of each case and no strait-jacket formula can be laid down.

Here, in the instant case, the court allowed the application filed under Section 311 of the Code of Criminal Procedure after coming to the conclusion that examination of the witnesses are necessary for just decision of the case.

In that event, I do not find any illegality with the order impugned. Hence, this application stands dismissed.

**( R. R. Prasad, J.)**

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