
(2003) 08 OHC CK 0035

In the Orissa High Court

Case No : Criminal Miscellaneous Case No. 1493 of 2003

Dara Singh @ Rabindra Kumar Pal and Others

APPELLANT

Vs

Republic of India

RESPONDENT

Date of Decision : 05-08-2003

Acts Referred:

Commissions of Inquiry Act, 1952 — Section 6

Criminal Procedure Code, 1973 (CrPC) — Section 311, 482

Citation : (2003) CLT 1046 (Suppl CrI)

Hon'ble Judges : A.S. Naidu, J

Bench : Single Bench

Advocate : B.R. Mohanty, B.K. Raj and A.K. Barik, for the Appellant; S.K. Padhi and Goutam Misra, for the Respondent

Final Decision : Dismissed

Judgement

A.S. Naidu, J.—This matter was listed for admission today, but with consent of learned Counsel for both sides, it was finally heard and is disposed of by this judgment.

2. The Petitioners who are accused in S.T. Nos. 161 of 1999 and 53 of 2000 pending in the Court of the learned Sessions Judge, Khurda, Bhubaneswar have filed this Criminal Misc. Case invoking the inherent jurisdiction of this Court u/s 482 of the Code of Criminal Procedure (for short "Code of Criminal Procedure"). The sole grievance of the Petitioners is that their application filed u/s 311, Code of Criminal Procedure has been illegally rejected by the learned Sessions Judge.

3. Admittedly, on 14.2.2003 a petition was filed on behalf of the Petitioners u/s 311, Code of Criminal Procedure to recall P. Ws. 2, 3, 5, 6, 10, 13, 14 and 15. Another petition was also filed to recall P. Ws. 16, 19, 23, 26, 33, 39, 40 and 43 for further cross-examination. The learned Sessions Judge rejected the said petitions on 15.3.2003. The said order of the Sessions Judge dated 15.3.2003 was impugned before this Court in Criminal Misc. Case No. 391 of 2003 which was disposed of by this Court on 27.2.2003 with the following direction:

1. The Petitioners shall be at liberty to file an application u/s 311 of Code of Criminal Procedure to recall those witnesses, who are required to be further cross-examined.
2. The Petitioners shall also indicate the questions that may be put to a particular witness.
3. The learned Sessions Judge on consideration of the petition shall find out whether such a question has been put and answered or not. He shall also find out whether the question has any relevance for the purpose of the case and shall also consider whether such a question is permissible and recall of witness on that basis provided the prayer comes within the ambit of Section 311, Code of Criminal Procedure. Those witnesses who have not supported the prosecution case shall not be recalled for the purpose of further cross-examination. If such petitions are filed before the learned Sessions Judge, the same shall be disposed of within 15 days from the date of filing.
4. It appears that on 20.3.2003 a fresh petition was filed u/s 311, Code of Criminal Procedure before the Sessions Judge to recall seventeen prosecution witnesses for further cross-examination. Along with the said petition, learned Counsel for defence also furnished a questionnaire to be put to particular witnesses. Prosecution filed objection repudiating the averments made in the petition and specifically stated that the questionnaire did not fall within the ambit of Section 311, Code of Criminal Procedure and that the same were not relevant. It was also submitted that the evidence of both sides in the two Sessions Trials had been concluded.
5. The learned Sessions Judge by his order dated 25.3.2003 rejected the petition filed on behalf of the Petitioners u/s 311, Code of Criminal Procedure. The said order is impugned in the present Criminal Misc. Case.
6. Mr. B.R. Mohanty, learned Counsel for the Petitioners, forcefully submitted that the trial Court has the power and authority to recall a witness at any stage of the trial and in view of the fact that the judgment has not been pronounced, there was no embargo for the trial Court to recall the witnesses sought to be cross-examined further. It was also submitted that the learned Sessions Judge has not properly appreciated the facts and has disposed of the petition in a stereo-type manner without due application of mind and it is a fit case where opportunity should be given to the Petitioners to further cross-examine the prosecution witnesses. Mr. Mohanty further submitted that the Sessions Judge did not permit the defence to confront the witnesses sought to be recalled with their statements made before the Wadhwa Commission and such action was illegal.
7. Mr. S.K. Padhi, learned Counsel for the Republic of India, at the other hand vehemently countenanced the argument advanced on behalf of the Petitioners. According to Mr. Padhi, the evidence of both the prosecution and the defence has concluded since long and the Court is at present in the midst of hearing the arguments advanced by the parties. According to him, the accused-petitioners

are adopting dilatory tactics in order to somehow or other prolong the trial.

8. Mr. Padhi referring to the impugned order submitted that the learned Sessions Judge has sacrosanctly discussed all the contentions raised on behalf of the accused Petitioners. He has examined each question sought to be put to different prosecution witnesses and after being fully satisfied that either the questions had already been put to the prosecution witnesses and had been answered and/or the questions sought to be put to different prosecution witnesses were not relevant for the purpose of trial, by a well discussed order has rejected the petition filed u/s 311, Code of Criminal Procedure

9. After hearing the learned Counsel for both sides, I carefully perused the questionnaire sought to be put to the witnesses on cross-examination vis-a-vis the impugned order. In paragraph-6 of the impugned order, the Court below has sacrosanctly discussed the questions sought to be put to P. Ws. 2, 3, 5, 11, 15, 23, 39 and 43 and also the objections raised by the prosecution regarding permissibility of putting such questions. He has also examined as to whether the questions sought to be put came within the ambit of Section 311, Code of Criminal Procedure On a scrutiny of the questionnaire vis-a-vis the evidence recorded, the Court below has held that out of the seventeen prosecution witnesses sought to be further cross-examined, three were declared hostile by prosecution and they were cross-examined by the defence. It was also observed that all other prosecution witnesses had been cross-examined at length running into several pages and that most of the questions sought to be put were already answered by the said witnesses or some other witnesses.

10. The argument advanced by Mr. Mohanty that the defence should be permitted to confront the witnesses sought to be recalled with the statements made by them before the Wadhwa Commission has no legs to stand. Law as provided u/s 6 of the Commissions of Inquiry Act is that the statement made by a person before the Commission constituted under the Commissions of Inquiry Act cannot be used in any civil or criminal proceeding. The said Act also grants immunity to a witness so as to enable him to speak the truth and nothing but truth without any fear or favour.

11. After discussing the entire facts and circumstances, the Sessions Judge has rejected the petition filed u/s 311, Code of Criminal Procedure Admittedly the prosecution and also defence have concluded their evidence and the trial has progressed considerably, inasmuch as the Court is in the midst of hearing the defence arguments. Though power is given to Court to recall a witness for further cross-examination, yet such power has to be exercised with discretion and according to ordinary and legal course of criminal trial. Therefore, a Court as a matter of fact should not recall a witness after the evidence is closed. An accused who has exhausted his power of cross-examination should not be given an opportunity to fiddle with the witnesses after closure of evidence.

12. The discretion u/s 311, Code of Criminal Procedure is limited and cannot be

exercised at late stage of a case, that too at the stage of arguments. Even otherwise the Court below has sacrosanctly followed the directions issued by this Court in CrI. Misc. Case No. 391 of 2003 and I do not find any error apparent on the face of the order.

13. In view of the aforesaid settled position of law, I find that the Sessions Judge has not acted illegally or with material irregularity and I am not inclined to interfere with the impugned order in exercise of my inherent jurisdiction at this stage of the trial.

14. The Criminal Misc. Case is, accordingly, dismissed.