

(2022) 11 OHC CK 0116
In the Orissa High Court
Case No : CRLMC No.3466 of 2022

Gadhadhar Mohapatra

APPELLANT

Vs

State Of Odisha (Vigilance)

RESPONDENT

Date of Decision : 14-11-2022

Acts Referred:

Code of Criminal Procedure, 1973 — Section 311, 482

Citation : (2022) 11 OHC CK 0116

Hon'ble Judges : R.K. Pattanaik, J

Bench : Single Bench

Advocate : S. Das, Niranjan Maharana

Final Decision : Disposed Of

Judgement

R.K. Pattanaik, J

- 1.The matter is taken up on special notice.
2. Heard learned Senior Advocate for the petitioner and learned Additional Standing Counsel for the Vigilance Department.
3. Instant petition under Section 482 Cr.P.C. is filed at the behest of the petitioner challenging the impugned order dated 10th November, 2022 passed in T.R. Case No.17/37of 2012/2007 pending in the file of learned Special Judge, Special Court, Bhubaneswar, whereby, an application filed under Section 311 Cr.P.C. to lead defence evidence was declined vide the impugned order dated 10th November, 2022 (Annexure-6) on the grounds inter alia that due opportunity was not provided to him before its rejection.
4. Mr. Das, learned Senior Advocate submits that the petitioner examined himself as a defence witness D.W.1 which was accomplished on 19th October, 2022, whereafter, application under Section 311 Cr.P.C was filed on 29th October, 2022. It is further submitted that the hearing of the matter was fixed to 10th November, 2022, the date on which, the local Bar was on accommodation, in

support of which, a copy of the notice of Bar as at Annexure-5 is produced and on the said date, the learned court below without providing an opportunity of hearing, considered the application under Section 311 Cr.P.C. on its own and disposed it of vide the impugned order (Annexure-6).

5. Mr. Das, learned Senior Advocate submits that the petitioner would be highly prejudiced if further defence evidence is not allowed. The contention is that the learned court below in absence of the petitioner disposed of the application under Section 311 Cr.P.C. without hearing him on 10th November, 2022 which is also evident from Annexure-6. Mr. Maharana, learned ASC for the Vigilance Department, on the other hand, submits that the petitioner seeks to introduce evidence in respect of and concerning certain documents which have already been marked as exhibits and therefore, the learned court below discussed in detailed and finally reached at a just conclusion that additional defence evidence is unnecessary and thus, correctly passed the impugned order i.e. Annexure-6 which hence calls for no interference.

6. There is no denial to the fact that application under Section 311 Cr.P.C. was filed nearly after 10 days of examination of the petitioner as D.W.1. It is made to suggest that the case before the court below was posted to 10th November, 2022 for consideration of the application under Section 311 Cr.P.C. filed by the petitioner, however, on the said date, it stood disposed of and according to Mr. Das, learned Senior Advocate, there was no hearing at all as the local Bar was on accommodation.

7. Mr. Maharana, learned ASC for the Vigilance Department submits that the learned court below considered the plea of additional evidence on merit and therefore, hence no justification lies to allow the same. At the same time, Mr. Maharana submits that if the Court is inclined to allow such a request for examination of the defence witnesses from the side of the petitioner, it may be allowed but the same should be accomplished on a single date without further delay or adjournment in favour of the petitioner.

8. Having regard to the settled position of law vis-à-vis recall and examination of witness in terms of Section 311 Cr.P.C. it is well settled that the same can be allowed at any stage of the proceeding as per there is no bar or restriction in that regard but then it has to be subject to the satisfaction of the court and realizing the necessity for such recall and examination or cross-examination as the case may be.

9. In the instant case, since the petitioner was examined as D.W.1 and he was inclined to adduce further evidence and to examine five more witnesses from his side and in that regard, an application under Section 311 Cr.P.C. was moved and the learned court below on the date fixed i.e. 10th November, 2022 for its consideration, as it appears without a proper hearing of petitioner disposed it of and declined it too which, in the considered view of the Court, is unjustified. In other words, the Court is of the opinion that the petitioner should be provided an

opportunity to lead additional evidence and examine list of witnesses submitted along with the application under Section 311 Cr.P.C. to the court below as a last chance in order to do complete justice.

10. Accordingly, it is ordered. In the result, CRLMC stands allowed. As a necessary corollary, the impugned order dated 10th November, 2022 passed in T.R. No.17/37 of 2012/2007 by the learned Special Judge, Special Court, Bhubaneswar is hereby set aside. Consequently, the learned court below is directed to issue process to the witnesses on the list provided by the petitioner for examination as defence evidence and fix up a date for the said purpose and also to ensure that witnesses are examined within a reasonable and as early as possible.

11. Urgent certified copy of this order be granted in course of the day.

.....