

(2009) 04 JH CK 0054

In the Jharkhand High Court

Case No : Criminal Revision No. 110 of 2009

Lal Ranjan Nath Shahdeo

APPELLANT

Vs

The State of Jharkhand

RESPONDENT

Date of Decision : 28-04-2009

Acts Referred:

Arms Act, 1959 — Section 25(1), 26, 35
Criminal Procedure Code, 1973 (CrPC) — Section 293, 311, 313
Explosive Substances Act, 1908 — Section 4, 5
Prevention of Cruelty to Animals Act, 1960 — Section 11
Wild Life (Protection) Act, 1972 — Section 4

Citation : (2009) 57 BLJR 2414

Hon'ble Judges : Jaya Roy, J

Bench : Single Bench

Advocate : Jitendra S. Singh, for the Appellant; P.K. Deomani, A.P.P, for the Respondent

Final Decision : Dismissed

Judgement

Jaya Roy, J.—The petitioner has filed the present revision application for setting aside the order dated 21.01.2009 passed by the learned Additional District Judge, Fast Track Court-IIInd, Latehar in Sessions Trial No. 303 of 2001, G.R. Case No. 201 of 2000, whereby, the learned court below has allowed the petition u/s 311 of the Code of Criminal Procedure filed on behalf of the prosecution.

2. The petitioner case in brief is that a case has been registered u/s 25(1-b), 26, 35 of the Arms Act, Sections 4/5 of the Explosive Substance Act and Section 4 of the wild Life Protection Act against the petitioner and others i.e. Chandwa P.S. Case No. 38 of 2000. After submission of the charge sheet, the case was committed to the Court of Sessions. Thereafter, during the trial after examination the prosecution witnesses, the statements of the petitioner was also recorded u/s 313 of the Cr.P.C and after conclusion of the argument on behalf of the prosecution, the prosecution has filed a petition u/s 311 stating therein that inadvertently the Expert Report of Sergeant Major could not be proved in this

case and in the interest of justice, it is necessary to be proved and brought on the record. Accordingly, a prayer is made to recall the prosecution case for evidence and to allow to mark Expert Report as Exhibit in this case u/s 293 Cr.P.C. The petitioner has filed a rejoinder opposing the prayer of the prosecution on the ground that the charge was framed in this case in the year 2006 and several adjournments were granted to the prosecution for producing its witnesses but it failed to prove the Expert Report and there is no explanation submitted by the prosecution for failure to bring the said document on the record.

3. Heard the learned Counsel of the petitioner and learned Counsel of the State. After considering the arguments advanced by both the parties and considering the impugned order, it appears that in the instant case, the charge has been framed u/s 25(1-b), 26/35 Arms Act, 4/5 Explosive Substance Act and Section 11 of Prevention of Cruelty to Animal Act. It also appears from the record that in the course of argument the defence has put reliance on the Expert Report available on the record which has not been marked as Exhibit. The prosecution has submitted that only due to bonafide mistake, the Expert Report could not bring on the record and in the interest of justice it should be brought on record. The main ground for objecting the aforesaid prayer of the prosecution is that the trial continues for more than eight years and after closure of the prosecution evidence when in the final argument the defence took plea that the Expert Report has not been exhibited, then only the prosecution in order to fill-up the lacuna, filed this petition u/s 311 Cr.P.C.

4. In my view, the trial court has rightly held as follows:

In this case most of the material witnesses have been examined by the prosecution and by allowing the petition to produce expert and prove the expert report it would not affect the adverse party rather in the interest of both the parties the expert report is an essential pieced of evidence.

5. The learned Counsel of the petitioner has cited two decisions of this Hon''ble Court i.e. 2006 (2) J.L.J.R. 625 : 2007 (2) J.L.J.R. 410. I find that these two decisions do not cover the facts of this case. On the other hand the Hon''ble Apex Court has held in the case of Hanuman Ram v. State of Rajasthan and Ors. reported in 2009 (1) S C.C. 140 which is as follows:

The object underlying Section 311 of the Code is that there may not be failure of justice on account of mistake of either party in bringing the valuable evidence on record of leaving ambiguity in the statements of the witnesses examined from either side. The determinative factor is whether it is essential to the just decision of the case. The Section is not limited only for the benefit of the accused and it will not be an improper exercise of the powers of the court to summon a witness under the section merely because the evidence supports the case for the prosecution and not that of the accused. The section is a general section which applies to all proceedings, enquires and trials under the Code and empowers Magistrate to issue summons to any witness at any stage of such proceedings,

trial or enquiry. In Section 311 the significant expression that occurs is "at any stage of inquiry of trial or other proceeding under this Code". It is however, to be borne in mind that whereas the section confers a very wide power on the court on summoning witnesses, the discretion conferred is to be exercised judiciously, as the wider the power the greater is the necessity for application of judicial mind.

6. In my opinion as the prosecution case is mainly based on the Expert Report it is absolutely necessary to allow the prosecution's prayer u/s 311 of the Cr.P.C. for just decision and up-hold the truth. Therefore, I do not find any reason to interfere with the impugned order.

7. I find no merit in this revision application. Accordingly, it is dismissed. However, as the case is very old one, the trial court is directed to conclude the trial within a period of six months from the date of receipt of this order. The office is directed to communicate the order forthwith to the court concerned.