

(2015) 05 JH CK 0028

In the Jharkhand High Court

Case No : Criminal Revision No. 541 of 2011

Mustkim Baitha and Others

APPELLANT

Vs

The State of Jharkhand

RESPONDENT

Date of Decision : 13-05-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 311

Citation : (2015) 05 JH CK 0028

Hon'ble Judges : Ravi Nath Verma, J

Bench : Single Bench

Advocate : Manoj Kumar Sah, Nutan Kumari Verma and Manjeet Prasad, for the Appellant; P.K. Appu, APP, Advocates for the Respondent

Final Decision : Dismissed

Judgement

Ravi Nath Verma, J.—The two petitioners have preferred this present revision application against the order dated 02.07.2011 passed by learned Sub Divisional Judicial Magistrate, Godda in G.R. Case No. 818 of 2004 corresponding to T.R. No. 1176 of 2011 whereby and whereunder the court has allowed the petition filed by the prosecution under Section 311 of the Code of Criminal Procedure (in short "the Code") and permitted the prosecution to examine the witness Laxminarayan Mahto, a Munsif of Police Station, who has brought the original F.I.R. (Sanha) of the case to prove the said document and mark the same as an exhibit.

2. On the basis of the fardbeyan of the informant Md. Dilabar Baitha, Godda (Mufassil) Sanha Case No. 502 of 2004 dated 28.07.2004 was lodged on the allegation that when the two petitioners Mustkim Baitha and Tajudeen Baitha were ploughing the land from the tractor, the informant came to the field and protested whereupon the petitioners assaulted the informant with Lathi and abused him also. The informant received injury in the head and body and when his wife came to his rescue, the petitioners assaulted her also. After hearing Hulla, the villagers came and saved the informant and his wife.

3. It appears from the record that after submission of the charge sheet, the court took cognizance of the offence and after framing of charge prosecution witnesses were examined. After closure of evidence, both the parties were heard and the case was fixed for judgment on 30.11.2010. It further appears that on the date of judgment i.e. on 30.11.2010, the prosecution filed a petition under Section 311 of the Code with a prayer that as the original Sanha is not available on record and the Munsif of the concerned Police Station Laxminarayan Mahto has brought the original Sanha, an opportunity be given to the prosecution to bring the said Sanha on record after examination of the said Laxminarayan Mahto. It further appears that the two petitioners filed their rejoinder to the said petition and after hearing both the parties, the court below allowed the petition filed by the prosecution holding that when the entire F.I.R. is incorporated in the case diary and the case is based on the said First Information Report bearing Godda Mufassil P.S. Case (Sanha) No. 502 of 2004 dated 28.07.2004, in the interest of justice, the presence of that document on record is necessary and justifiable.

4. Learned counsel appearing for the petitioner assailing the order impugned submitted that because of non-filing of Sanha by prosecution at proper stage, a valuable right has accrued to the petitioners and by filing the petition under Section 311 of the Code, the prosecution wants to fill up the lacuna which cannot be allowed at the fag end of the trial when the case was fixed for judgment. It was also submitted that in the petition under Section 311 of the Code no reason was assigned much less to the satisfaction of the Court as to why the said Sanha was not produced earlier and the parties were fully aware of the fact that the original F.I.R. (Sanha) is not on record. Learned counsel further relying upon a judgment reported in Ravi Bhushan Dubey and Another Vs. State of Jharkhand and Another, (2006) CriLJ 2507 : (2006) 2 JCR 22 ; Ravi Bhushan Dubey and Anr. Vs. State of Jharkhand and Anr. submitted that if the prosecution fails to produce the witnesses and allowed the case to hang for several years, after closure of the prosecution case the petition for examination of witnesses cannot be allowed. Learned counsel further relying upon a judgment reported in Nesar Ahmad @ Nasser and Others Vs. The State of Bihar and Another ; Nesar Ahmad @ Nasser and Ors. Versus State of Bihar and Anr. submitted that since the documents does not come within the ambit of Section 311 of the Code, the power under Section 311 of the Code cannot be exercised.

5. The main objection of the learned counsel for the petitioners is that the trial continues for almost 5-6 years and after closure of the prosecution evidence and the argument of both the parties when the case was fixed for judgment, the prosecution filed the aforesaid petition in order to fill up the lacuna.

6. In the case of Hanuman Ram Vs. The State of Rajasthan and Others, AIR 2009 SC 69 : (2009) CLT 50 : (2008) 11 JT 154 : (2008) 13 SCALE 155 : (2008) 15 SCC 652 the Hon"ble Supreme Court has held 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 of the prosecution and not that of the accused. The section is a general section which applies to all proceedings, enquiries 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 wide the power the greater is the necessity for application of judicial mind."

7. In my opinion, it is to be borne in mind that in the instant case, as the entire prosecution case is based on the said F.I.R. (Sanha) it is absolutely necessary to bring that document on record for just decision and uphold the truth. The expression in Section 311 of the Code "at any stage of inquiry or trial or any stage of proceeding" confers a very wide power on the court and mandate summoning of witness in the interest of just and for just decision of the case. It is a discretionary power which is to be exercised judiciously. Therefore, I do not find any cogent reason or ground to interfere with the order impugned.

8. This revision application being devoid of any merit, is hereby, dismissed. However, as the case is very old, the trial court is directed to conclude the trial within a period of two months from the date of receipt of this order. Office is directed to communicate this order forthwith to the court concerned.