
(2007) 04 JH CK 0073
In the Jharkhand High Court

Rajendra Kumar Gupta @ Rajendra Gupta and Jawahar Lal
Gupta

APPELLANT

Vs

State of Jharkhand

RESPONDENT

Date of Decision : 18-04-2007

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 232, 311, 313, 482
Penal Code, 1860 (IPC) — Section 302

Citation : (2007) 4 JCR 382

Hon'ble Judges : Dabbiru Ganeshrao Patnaik, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

D.G.R. Patnaik, J.—Petitioners have invoked the inherent jurisdiction of this Court u/s 482 of the Code of Criminal Procedure, praying for quashing the order dated 29.7.2005 passed by the learned 1st Additional Sessions Judge, Bokaro in Sessions Trial No. 255 of 2002, whereby the prosecution's prayer for marking the formal F.I.R. and the charge sheet as exhibits in the evidence, was allowed and the documents were marked as Exhibits 9 and 10 by the trial court. The main ground advanced in support of the prayer is that the learned court below has passed the impugned order beyond its authority thereby perpetrating injustice to the petitioners in their defence since the order amounts to allowing the prosecution to fill up its lacuna at a belated stage.

2. Heard learned Counsel for the petitioners and learned Counsel for the State.

3. The background fact of the case in brief is that pursuant to the case registered against them for the offence u/s 302 I.P.C. the present petitioners are facing trial in the aforementioned case. The prosecution's evidences were closed, whereafter the accused persons were examined u/s 313 Cr. PC. Thereafter a petition u/s 232 Cr. PC was filed on behalf of the petitioners/accused for their acquittal on the ground that the charge as framed against them, has not been proved and established by the prosecution's evidence. In course of submissions made on the

aforementioned petition on behalf of (he petitioners in their defence it was pointed out that the F.I.R. and the charge sheet of a particular case relied upon by the prosecution, was not adduced in evidence by the prosecution. The prosecution thereafter made a prayer before the trial court for marking the charge sheet and formal F.I.R. of the case as exhibits in evidence. The petitioners filed their formal objection against the prayer of the prosecution, but overruling the objection raised by the petitioners, the learned trial court allowed the prayer of the prosecution and marked the documents which were available on record as exhibits in evidence. While recording the impugned order, the learned trial court had observed that the documents sought to be produced in evidence, were public documents and necessary 10 he adduced in evidence.

3. Learned counsel for the petitioners strenuously argued that though the prosecution had examined its witnesses, but none of the witnesses had made any reference whatsoever to the aforementioned documents and had closed its evidences. It was only after the examination of the accused persons u/s 313 Cr. PC and on being pointed out by the defence, that the prosecution has sought to fill up its lacuna. The learned court below has seriously erred in allowing the prosecution to fill up its lacuna. Learned counsel adds that powers u/s 311 Cr. PC has been improperly exercised by the learned court below as it has enabled the prosecution to fill up its lacuna to the prejudice of the petitioners.

4. Learned counsel for the State on the other hand, refutes the grounds advanced by the petitioners and submits that the impugned order does not suffer from any infirmity whatsoever, as because it was passed in proper exercise of the powers of the court u/s 311 Cr. PC and in any case, both the documents which were marked as exhibits in evidence, were public documents and available on record and the trial court had ample authority to take judicial notice of the documents even otherwise.

5. The controversy raised by the petitioners in respect of the impugned order relates to the exercise of the powers of the trial court u/s 311 Cr. PC The main contention of the learned Counsel for the petitioners is that the exercise of the powers u/s 311 Cr. PC at a belated stage should not have been made by the trial court and the prosecution should not have been allowed to fill up its lacuna.

Section 311 Cr. PC reads as follows:

311. Power to summon material witness, or examine person present.- Any Court may, at any stage of any inquiry, trial or other proceeding under this Code, summon any person as a witness, or examine any person in attendance, though not summoned as a witness, or recall and re-examine any person already examined; and the Court shall summon and examine or recall and re-examine any such person if his evidence appears to it to be essential to the just decision of the case.

On bare reading of the provisions, it would appear that it enables a wide discretion to the court to act in exigency of the justice required and it can be

exercised by the court at any stage of any inquiry, trial or other proceeding. The section consists of two parts; one part is its discretionary powers enabling the court at any stage (a) to summon any witness (b) to examine any person present in court (c) to recall or re-examine any witness. The second part which is mandatory, compels the court to take any of the above Steps if the new evidence appears to be essential for just decision of the case. There is no limitation on the part of the court arising from the stage to which the trial may have reached, provided the court is satisfied that for just decision of the case, step must be taken. Object of the section is to arrive at the truth irrespective of the fact that the prosecution or the defence has failed to produce some evidence which is necessary for just decision of the case. The requirement of just decision does not limit the section to something in the interest of the accused only. The section may equally benefit the prosecution. If the trial court thinks that certain evidence is essential for just decision of the case, it is bound to bring on record whether a suggestion emanates from the party or not. However, provisions u/s 311 Cr. PC does not lay down unrestricted powers in exercise of discretion by the court. The powers are not to be exercised when the prosecution wantonly failed to examine witnesses and the application for reexamining the witnesses at a belated stage to invoke the powers u/s 311 Cr. PC. However, the case would be otherwise when a prosecution's witness is not called or material piece of evidence is not adduced only for lack of foresight. It entirely depends upon the facts and circumstances of the case and satisfaction of the trial court to consider as to whether the evidence sought to be introduced, is necessary for just decision of the issue to be determined in the case.

6. In the instant case, it would appear that the documents which were allowed to be adduced in evidence, are public documents as indicated in the impugned order of the learned trial court and the same was already filed by the prosecution and were available on record and the trial court could very well have taken judicial notice of such document even without formal proof of the documents in evidence. Contention of the learned Counsel for the State that omission on the part of the prosecution to adduce documents in evidence by way of formal proof was possibly on account of lack of foresight on the part of the learned prosecutor, appears to have substance. It is not a case where documents were filed for the first time by way of adducing evidence taking the defence thereby by surprise. On the contrary, from the impugned order of the learned trial court, it appears that reference to the documents namely F.I.R. and charge sheet were made by one of the witnesses namely PW11 in his evidence. It cannot therefore be said that by the impugned order, learned trial court has allowed the prosecution to fill up its lacuna and defence has suffered prejudice due to the introduction of the documents in evidence.

7. For the reasons stated above, I do not find any merit in this application, which is accordingly dismissed.