

Criminal Revision

Present: **The Hon'ble Justice Ashim Kumar Roy**

C.R.R. No. 495 of 2010

Judgment On: 16-04-2010.

Balaram Majhi

versus

Central Bureau of Investigation

POINTS:

RECALLING OF WITNESS- The three witnesses, who were sought to be recalled, were cross-examined on behalf of the petitioner at length- Whether it can be invoked only with the object of discovering relevant fact or obtaining proper proof of such fact for a just decision of the case-Code of Criminal Procedure, 1973 S.311.

FACTS:

The petitioner along with another, has been facing his trial before the Learned Judge, Special Court, C.B.I., Calcutta on the allegation while they were working as the Office Superintendent and the Chief Medical Superintendent at Kasturaba Gandhi Hospital, Chittaranjan Locomotive Works, Chittaranjan have misappropriated nearly Rs. 16 lakhs by obtaining medical reimbursement from Imprest Fund on the basis of forged and fabricated papers. In course of the said trial after examination of 17 witnesses were already over, the present petitioner moved an application under Section 311 of the Code of Criminal Procedure with a prayer for recalling P.W. 7 the Chief Vigilance Officer, P.W. 13 the Handwriting Expert, P.W. 16 General Manager for their re-examination. The trial Court rejected such prayer, hence this criminal revision.

HELD:

It is true right to cross-examine a witness is a very valuable and fundamental right of an accused to prove his innocence as well as for just decision of a criminal case any witness can always be re-examined on recall. This is a case where all the three witnesses, who were sought to be recalled, were cross-examined on behalf of the petitioner at length. It may be that in the consideration of a newly engaged defence lawyer, further cross-examination of a witness is necessary after the evidence of such witness is closed, that does not mean such further cross-examination is essential for just decision of the case. The power conferred under Section 311 of the Code can be invoked only with the object of discovering relevant fact or obtaining proper proof of such fact for a just decision of the case, in other words, to throw light upon the matter in dispute. This provision cannot be taken into recourse either to help the prosecution or the defence. The fundamental requirement is to see whether the Court finds the same is necessary in the interest of justice and very strong and valid reasons are necessary for exercising this power. Whether any show cause notice or disciplinary proceeding was initiated against the petitioner or not and if initiated what was the result of the same are matters of record for which further cross-examination of the P.W. 16 is not at all necessary. It appears during his cross-examination the witness categorically stated that he accorded sanction and it was very much noted in the sanction order that after application of mind and careful perusal of the materials on record sanction was accorded. Recalling of P.W. 7, P.W. 13 and P.W. 16 for further examination is not at all essential for just decision of the case. Paras-4&5

For Petitioner : Mr. Debasish Roy
Mr. Sandip Kundu

For C.B.I. : Mr. Himangshu De

For Accused : Mr. Sandipan Ganguly

THE COURT:

1. The present petitioner along with another, viz., Sanyasi Chandra Naskar has been facing his trial before the Learned Judge, Special Court, C.B.I., Calcutta on the allegation while they were working as the Office Superintendent and the Chief Medical Superintendent at Kasturaba Gandhi Hospital, Chittaranjan Locomotive Works, Chittaranjan have misappropriated nearly Rs. 16 lakhs by obtaining medical reimbursement from Imprest Fund on the basis of forged and fabricated papers.

In course of the said trial after examination of 17 witnesses were already over, the present petitioner moved an application under Section 311 of the Code of Criminal Procedure with a prayer for recalling P.W. 7 Sri Animesh Dhar, the Chief Vigilance Officer, P.W. 13 A. S. Gupta, the Handwriting Expert, P.W. 16 Sri S. Dharani, General Manager for their re-examination. The trial Court rejected such prayer, hence this criminal revision.

2. Heard the Learned Counsels appearing on behalf of the parties. Perused the materials on record, more particularly the impugned order.

3. It is submitted on behalf of the petitioner that out of its total 19 witnesses, the prosecution has already examined 17 witnesses and the Investigating Officers of the case are yet to be examined. It was further submitted that the learned lawyer who was defending the petitioner due to his illness has to retire from the case and a new lawyer was engaged to defend him. The said new Counsel after taking over the charge and going through the records of the case felt and considered. P.W. 7, the Chief Vigilance Officer, P.W. 13 Handwriting Expert and P.W. 16 the General Manager, who gave the sanction for prosecution were required to be cross-examined further and accordingly on 12th of January, 2010 an application under Section 311 was filed. In connection with the said application another application was filed on 3rd of February, 2010 in which the petitioner disclosed

as to why their cross-examination on recall was necessary, but the Learned Court below without assigning any just and valid reason rejected such prayer.

On the other hand, the Learned Counsel appearing on behalf of the C.B.I. as well as the Learned Counsel appearing on behalf of the other accused persons vehemently opposed this criminal revision and submitted that no cross-examination of the said witnesses are necessary for just decision of the case and it is a dilatory tactics adopted by the petitioner so as to preclude the conclusion of the trial.

4. It is true right to cross-examine a witness is a very valuable and fundamental right of an accused to prove his innocence as well as for just decision of a criminal case any witness can always be re-examined on recall. This is a case where all the three witnesses, who were sought to be recalled, were cross-examined on behalf of the petitioner at length. While P.W. 7 was examined on June 5, 2009, both the P.W. 13 and P.W. 16 were examined on 21st of August, 2009 and on 29th of December, 2009 and the application under Section 311 was moved only on 12th of January, 2010. It may be that in the consideration of a newly engaged defence lawyer, further cross-examination of a witness is necessary after the evidence of such witness is closed that does not mean such further cross-examination is essential for just decision of the case. The power conferred under Section 311 of the Code can be invoked only with the object of discovering relevant fact or obtaining proper proof of such fact for a just decision of the case, in other words, to throw light upon the matter in dispute. This provision cannot be taken into recourse either to help the prosecution or the defence. The fundamental requirement is to see whether the Court finds the same is necessary in the interest of justice and very strong and valid reasons are necessary for exercising this power. It appears the defence prayed for further cross-examination of P.W. 7 as to the mode of seizure of documents and obtaining alleged specimen signature and writing of the petitioner. Although in the cross-

examination of the said witness the factum of seizure of the document and obtaining of alleged specimen signature and writings of the accused was never disputed. It appears from the evidence-in-chief of the Handwriting Expert that he has categorically disclosed the mode of examination of the question documents. Whether any show cause notice or disciplinary proceeding was initiated against the petitioner or not and if initiated what was the result of the same are matters of record for which further cross-examination of the P.W. 16 is not at all necessary. The P.W. 16 is the person concerned who accorded sanction for prosecution of the petitioner. It appears during his cross-examination the witness categorically stated that he accorded sanction and it was very much noted in the sanction order that after application of mind and careful perusal of the materials on record sanction was accorded.

5. For the reasons stated above, I am of the opinion recalling of P.W. 7, P.W. 13 and P.W. 16 for further examination is not at all essential for just decision of the case. This criminal revision has no merit and accordingly stands dismissed. Interim order, if any, stands vacated.

6. Criminal Section is directed to deliver urgent Photostat certified copy of this Judgment to the parties, if applied for, as early as possible.

(Ashim Kumar Roy, J.)