

HIGH COURT OF UTTARAKHAND AT NAINITAL

Criminal Revision No. 114 of 2019

Kaushik Bisht ...Revisionist.

Versus

State of Uttarakhand Respondent.

Present :

Mr. Lalit Sharma, Advocate for the revisionist.

Mr. Siddhartha Bisht, Brief Holder for the State of Uttarakhand.

Dated: 30th July, 2019

JUDGMENT

Hon'ble Sharad Kumar Sharma, J.

Section 311 of the Cr.P.C. gives an exclusive power to the Court as defined under the Cr.P.C. that it may at “any stage” of an inquiry, trial or “other proceedings”, under this Code, may summon any person as a witness, or examine any person in evidence, though not summoned as a witness in the earlier set of proceedings.

2. The argument, which has been extended by the learned counsel for the revisionist, while challenging the order dated 21st January, 2019, by virtue of which, the F.T.C./ Additional District and Session Judge/ Special Judge POCSO Haldwani, Nainital, in Special Session Trial No. 12 of 2017, State Vs. Anand Singh Rana and others, which was being tried before the Sessions Court, had exercised its powers under Section 311 of the Cr.P.C. for the purposes of summoning of the witnesses, who were named as Krishna Rani, Maya Pandey, who were the Superintendent of Government Balika Grah, Almora. The matter which was pending consideration for the trial, was a trial in relation to the offence under Sections 376 (2), 323, 504 IPC to be read with Section 5/6 POCSO Act as well as in relation to the accused Sushma Singh, it was the trial, which was being conducted under Sections 366-A, 323, 504 I.P.C. to be read Section

21 (1) and 16/17 of the POCSO Act and for other co-accused, namely Anand Rana, it was an offence, which was being tried under Sections 376 (2), 323, 506 I.P.C. to be read with Section 5/6 POCSO Act. At the stage, when the proceedings were pending consideration before the Sessions Court, the prosecution had moved an application, paper No. 83-kha, by invoking the provisions of Section 311 of the Cr.P.C. for summoning some of the witnesses at the stage when the trial was pending consideration before the Sessions Court, before it comes to any logical conclusion with regard to the offences, which were levelled against the accused revisionist.

3. By the application, preferred under Section 311 of the Cr.P.C. it gives an avenue and ample of powers to the Trial Court to exercise its domain at any stage of the proceedings, to call upon the witness, which the Court considers it to be necessary to be considered for the purposes of better elucidation of the controversy and for settling of the offences as against the present accused persons by their examination and considering their statements before drawing any logical conclusion.

4. By the impugned order dated 21st January, 2019, the application under Section 311 of the Cr.P.C. was allowed by the Special Sessions Judge, calling upon certain witnesses to be examined for trying the offence, which is being challenged by the revisionist accused from the view point that the stage at which the application under Section 311 Cr.P.C. has been filed, i.e. at the stage of 313 Cr.P.C., the prosecution witnesses have already been examined at that stage, when application under Section 311 Cr.P.C. cannot be invoked for the purposes of summoning of the witnesses by the Court trying the offence.

5. This Court is not in agreement with the argument as extended by the learned counsel for the revisionist that on the closure of the prosecution witnesses and when the proceedings have reached

to a stage of Section 313 Cr.P.C., the provision contained under Section 311 Cr.P.C. cannot be invoked because this argument runs contrary to the very spirit and the purpose, for which, Section 311 Cr.P.C. has been incorporated by the Legislature in the Cr.P.C., wherein, it gives ample of power to the Trial Court to summon and examine the witness which are necessary for the purpose of determination of the issue involved before in the trial at any stage of the proceeding, which according to this Court, will include the proceedings even after the closure of the prosecution witnesses or the stage of 313 Cr.P.C.

6. The second argument, which has been extended by the learned counsel for the revisionist while challenging the order impugned dated 21st January, 2019, is to the effect that for the purposes of invoking an application under Section 311 Cr.P.C., there has had to be a reasonable ground which is to be expressed by the prosecution while filing an application under Section 311 of the Cr.P.C. in the application itself.

7. As far as the reasoning in the application under Section 311 of the Cr.P.C. is concerned, it is always a subjective matter for consideration, which depends upon the perception of each and every court as per the requirement of the case and, according to its own wisdom and the intellect which the Court possessed. This Court is of the view that irrespective of whatsoever the logical reasonings might be assigned by the prosecution for the purposes of invoking Section 311 Cr.P.C., the accused, who is apprehending the examination of additional witnesses for the purposes of establishment of the offence leveled against him, it becomes inevitable for him to take a stand that the reason given in the application did not justify the invocation of the provisions contained under Section 311 of the Cr.P.C.

8. As far as this argument is concerned, this has to be looked into from another view point also that as far as for the

purposes of summoning the additional witnesses for conducting the proceedings before the Trial Court as far as the reasons are concerned, it is always the prerogative of the Trial Court, which is ceased with the proceedings to be satisfied with the reasonings assigned in the application, which have been given in the application by the prosecution whether at all it calls for invoking the powers under Section 311 of the Cr.P.C. or not.

9. At least, the accused person, who is facing the trial cannot have a right of defence in his argument on allowing the application under Section 311 of the Cr.P.C. under the pretext that the application filed under Section 311 Cr.P.C. by the prosecution was not having any plausible reasons for summoning the witnesses as it is not the prerogative of the accused person facing the trial to scrutinize the veracity of the reasons assigned in the application under Section 311 of the Cr.P.C. for summoning of the witnesses, it is always the prerogative of the Court itself to be satisfied with the reasons given in the application under Section 311 Cr.P.C.

10. There is another reason, why this Court is hesitant to interfere in a challenge given to the impugned order as passed by the Court on 21st January, 2019, is that the basic purpose and intention as per the language used under Section 311 of the Cr.P.C. is to equip the Court with sufficient power to summon the witnesses, which according to the opinion of the Court under given circumstances of each case are necessary for the purposes of examination in order to enable and equip the Court to analytically determine the question which is pending consideration before it and no such impediment in the manner, in which, it has been sought to be raised by the accused revisionist while questioning the order dated 21st January, 2019, would be available to him to argue as its determination is an exclusive prerogative of the Trial Court to conclude as to whether at all the persons sought to be summoned by the prosecution is or are

necessary for the purposes of the rightful adjudication of the matter and justifiable settlement of the case.

11. The learned counsel for the revisionist has lastly argued that invocation of Section 311 Cr.P.C. by the prosecution cannot be utilized to fill in the lacunae of the evidence which has already been adduced before the Trial Court by examination of additional witnesses by summoning them under Section 311 of the Cr.P.C.

12. This Court is not in agreement with the argument which has been extended by the learned counsel for the revisionist for the reason that at the stage when the Court is under consideration of the application under Section 311 Cr.P.C. and considering the justification of summoning the witnesses at the stage when Court decides to summon a witness under Section 311 Cr.P.C., it cannot be a stage where a revisionist can have an argument that the prosecution intended to fill in lacunae of the trial, which was pending consideration before the Court. The said argument could have only been extended only after the witnesses are summoned under Section 311 of the Cr.P.C., its only when they are examined by the Court and after recording of their statement and their cross examination what implication will it carry on the trial, it is at that stage, at which, the accused person can have a say while challenging the final order, that the statement thus recorded by the witnesses who are summoned under Section 311 of the Cr.P.C. was for the purposes to fill in the lacunae of evidence, which has occurred in conduct of trial.

13. For the reasons aforesaid and after considering the reasons which has been assigned by the learned Sessions Court while allowing the application under Section 311 of the Cr.P.C., this Court is of the view that the impugned order does not suffer from any apparent error of mistake but rather it goes to meet the spirit and purposes of Section 311 of the Cr.P.C. for a proper and effective adjudication of trial.

14. Thus, the Revision fails and is accordingly dismissed.
15. However, there would be no order as to costs.

(Sharad Kumar Sharma, J.)
30.07.2019

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