



AFR

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLMC No. 2534 of 2022

Golakha Chandra Pradhan

Petitioner

Mr. J.K. Khuntia, Advocate

-versus-

State of Odisha & another

Opposite Parties

Mr. A.K. Apat, Addl. P.P.

Mr. S.P. Dash, Advocate
for O.P. No.2

CORAM:

THE HON'BLE MR. JUSTICE CHITTARANJAN DASH

Date of Judgment: 22.08.2025

Chittaranjan Dash, J.

1. Heard learned counsels for both the parties.
2. By means of this application, the Petitioner seeks to set aside the order dated 21.01.2022 passed by the learned J.M.F.C., Kendrapara in G.R. Case No.1579 of 2016 and the confirming order dated 05.07.2022 passed by the learned Sessions Judge, Kendrapara in Criminal Revision No.05 of 2022 under Annexure-6 and 7 respectively.
3. The background facts of the case are that the Petitioner, being the Informant, lodged FIR before the Sadar P.S., Kendrapara vide P.S. Case No.321 of 2016, arising out of G.R. Case No.1579 of 2016, against the Opposite Party No.2 for commission of offence



under Sections 294/506/427 IPC. The matter was henceforth brought to trial. The P.W.5 namely Prahallad Pradhan, who adduced his evidence on 02.05.2019 and cross-examined by the defence was required to be recalled for further cross-examination. To meet the same, an application under Section 311 Cr.P.C. was filed before the learned J.M.F.C., Kendrapara on 31.07.2019. The aforesaid application was appended with a questionnaire consisting of four questions as A, B, C, D. The learned court allowed the said prayer of the Petitioner and directed P.W.5 to face the cross-examination. On 03.09.2021, P.W.5 faced the cross-examination. After completion of the evidence, the Petitioner-accused moved an application praying the learned court to expunge the question and answer in respect to the evidence of P.W.5 beyond the question allowed for cross-examination recalling the witness. The learned court i.e. the S.D.J.M., Kendrapara, having heard the Parties, declined to expunge the said portion of the evidence. The Petitioner, being aggrieved by the said order dated 21.01.2022 passed by the learned S.D.J.M., Kendrapara, moved before the learned Sessions Judge, Kendrapara in Criminal Revision No.05 of 2022. The learned Sessions Judge, vide its order dated 05.07.2022, found the impugned order of the learned J.M.F.C., Kendrapara, appropriate and confirmed the same, dismissing the revision.

4. The learned counsel for the Petitioner, in course of hearing, submitted that the impugned orders suffer from serious infirmity in law and are therefore liable to be interfered with. It was urged that while allowing the application under Section 311 Cr.P.C., the learned court had confined the recall of P.W.5 only to the specific questionnaire annexed to the petition. However, during such recall,



the witness was subjected to as many as twenty-four questions, far exceeding the seven questions originally permitted. This, it was contended, amounted to granting a fresh and roving cross-examination under the guise of recall, which is impermissible in law and has resulted in prejudice to the prosecution. The Petitioner accordingly prayed that the portion of the evidence recorded beyond the questionnaire be expunged from the record, as retention of the same would cause miscarriage of justice.

5. The learned counsel for the State, on the other hand, opposed the submissions advanced on behalf of the Petitioner and contended that the impugned orders passed by the courts below are just and proper and warrant no interference. It was argued that the purpose of Section 311 Cr.P.C. is to enable the Court to elicit the truth by permitting further examination of a witness if the same is essential for a just decision of the case. The additional questions put to P.W.5, though not verbatim from the questionnaire, were intrinsically connected to the issues raised therein and formed part of the same transaction, thereby falling within the scope of the recall. It was further contended that expunging such answers would cause grave prejudice to the accused by curtailing his opportunity to establish his defence, whereas retention of the same does not cause any demonstrable prejudice to the Petitioner. Hence, the orders of the learned trial court as well as the revisional court are in consonance with the settled principles of fair trial and do not call for any interference.

6. Section 311 Cr.P.C 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.

7. Section 311 of the Cr.P.C. thus vests the Court with a wide discretionary power to summon, recall or re-examine any witness at any stage of inquiry, trial or other proceeding, if such examination appears to the Court to be essential for a just decision of the case. The provision is couched in the broadest terms so as to advance the cause of justice, while leaving it to the judicial discretion of the Court to regulate its application depending on the facts and circumstances of each case.

8. Having regard to the above position of law, what is required to be examined in the present case is whether the discretion exercised by the learned trial court, and affirmed by the revisional court, in permitting questions beyond the questionnaire annexed to the petition under Section 311 Cr.P.C., was in consonance with the object and scope of the provision, or whether it transgressed the limits of fairness so as to occasion prejudice to the prosecution.

9. From the aforesaid provision, it emerges that the Court enjoys ample power to allow or put questions beyond a pre-submitted questionnaire, for such authority is inherent in Section 311 Cr.P.C. The provision, rendered in broad terms, confers discretion on the Court to summon, recall or re-examine any witness at any stage of the trial if the Court is satisfied that such



exercise is essential for a just decision of the case. The paramount consideration for the Court in exercising such power is the advancement of justice, and the determinative test remains whether the additional line of questioning is necessary to secure the truth and facilitate a fair adjudication. While such discretion is enabling in nature, it is not unbridled; it must be exercised judiciously and only for the purpose of eliciting truth, without prejudice to either party. The caution that accompanies the exercise of this power is that it cannot be permitted to operate in a manner prejudicial to the accused or to be used as a device to fill up lacunae in the prosecution or the defence, nor can it extend to a wholesale reopening of the cross-examination. The emphasis of law is therefore on affording a fair opportunity rather than on granting an unlimited licence.

10. In the present case, the application under Section 311 Cr.P.C. was accompanied with a specific questionnaire, yet during the recall of P.W.5, the witness was subjected to a large number of additional questions, far in excess of those annexed. Although it may be urged that the Court, in the exercise of its discretion, considered such questions relevant to the fairness of the trial, the record reveals that this latitude went much beyond the scope of the recall that had originally been permitted. Such a course of action, if left unchecked, has the potential to transform the enabling character of Section 311 into an instrument of abuse, thereby opening a floodgate of adverse practices where parties may seek to prolong proceedings or fill up gaps in their case under the guise of recall. It is one thing for the Court to allow limited additional questions essential for clarification; it is another to permit a fresh and roving



cross-examination which the provision does not contemplate. While ultimately the evidentiary value of such answers shall be weighed at the stage of final appreciation, the very act of permitting extensive questioning beyond the questionnaire, contrary to the spirit of the provision, cannot be sustained.

11. Therefore, this Court is of the considered view that the discretion exercised by the learned trial court, and affirmed by the revisional court, in permitting a line of questioning far beyond the questionnaire originally allowed, is not sustainable in law. Though Section 311 Cr.P.C. is enabling and wide in its amplitude, its application must remain within the bounds of necessity and fairness, and not be stretched to the extent of permitting a de novo cross-examination under the guise of recall. The impugned orders, having overlooked this limitation, suffer from material irregularity and warrant interference.

12. Accordingly, the order dated 21.01.2022 passed by the learned J.M.F.C., Kendrapara in G.R. Case No.1579 of 2016, as well as the confirming order dated 05.07.2022 passed by the learned Sessions Judge, Kendrapara in Criminal Revision No.05 of 2022, are hereby set aside, with the consequence that the portion of evidence elicited beyond the questionnaire annexed to the recall petition shall stand expunged from the record.

(Chittaranjan Dash)
Judge

Signature Not Verified

Digitally Signed 
Signed by: BIJAY KETAN SAHOO
Reason: Authentication
Location: HIGH COURT OF ORISSA
Date: 08-Sep-2025 10:28:51