

2023 SCC OnLine Chh 2877

In the High Court of Chhattisgarh, Bilaspur

(BEFORE RAKESH MOHAN PANDEY, J.)

Royden Harold Buthello ... Petitioner/Applicant;

Versus

State of Chhattisgarh, through - Station House
Officer ... Respondent.

Cr.M.P. No. 1298 of 2023

Decided on August 4, 2023

Advocates who appeared in this case:

For Petitioner Mr. Vimal Patel & Mr. D.M. Galani, Advocates with Mr. Neeraj Choubey, Advocate

For Respondent : Mr. Vimlesh Bajpai, Govt. Advocate

The Order of the Court was delivered by

RAKESH MOHAN PANDEY, J.:— The petitioner has challenged the order dated 13.06.2023 passed by the learned Special Judge (NDPS Act), Raipur in Special Case No. 87/2020 whereby an application moved by the petitioner under Section 311 of Cr. P.C. has been rejected.

2. The facts of the present case are that the petitioner is an accused in a case, which is being tried by the Special Court (NDPS Act), Raipur for the commission of offences punishable under Sections 22(b), 29 & 27 of Narcotics Drugs and Psychotropic Substances, Act, 1985 (for short 'the NDPS Act'). The petitioner is a businessman carrying on the business of Logistics, Transportation, and Renting out Vehicles etc. for the last 35 years. The petitioner was running his business in the State of Odisha as well as in the State of Chhattisgarh and there are contracts dated 22.09.2018, 30.10.2019 and 05.10.2020 entered between M/s Jai Ambe Roadlines Raipur, Chhattisgarh; M/s Daylight Mining, Construction Pvt. Ltd. Pradhanpada, Odisha and Soheli Roadways, Angul, Odisha. On account of the nature of business, the petitioner was required to travel frequently from Raigarh to Talcher, Odisha. In September 2020; he shifted to Talcher, District Angul. On 20.10.2020 at about 01 : 00 pm, five police officials from Raipur, C.G. visited Hotel Green Park, where the petitioner was staying and he was accompanied along with those police officials to Raipur. On 21.10.2020 the petitioner was brought to Kotwali Police Station, Raipur, thereafter he was taken to Mahadapara Police Station and his belongings were taken and he was put in the lockup. He was interrogated by the police officials. On the same day at about 03 : 00 pm. he was dropped back at Kotwali

Police Station and was interrogated by the IPS Officer Smt. Ankita Sharma, the then CSP of Police Station Azad Chowk, Raipur and Police Inspector Ramakant Sahu. On 22.10.2020 it was informed that the petitioner was found in possession of 40 grams of brown-sugar and consequently, F.I.R. was registered against him.

3. The police after investigation filed the charge sheet against the petitioner. All prosecution witnesses have been examined and the statement of the petitioner under Section 313 of Cr. P.C. has also been recorded.

4. The petitioner moved an application under Section 311 of Cr. P.C. for summoning and examining Smt. Ankita Sharma, the then CSP of Azad Chowk Police Station as a court witness on the ground that the petitioner was interrogated by CSP Smt. Ankita Sharma and the interview were also given to the news reporters of IBC 24 News Channel. This fact has been confirmed by PW-13 Priyesh John, Sub-Inspector and it is further stated that CSP Smt. Ankita Sharma has played an active role in the investigation of F.I.R. No. 232/2020 and the prosecution deliberately and willfully avoided mentioning her name as one of the prosecution witnesses. It is further stated that the Investigating Officer PW-13 Priyesh John in his evidence in paras -102, 103, 161, 181, 182, 183, 184, 217, 219 and 272 has categorically admitted the fact that the CSP Smt. Ankita Sharma was involved in the investigation of the case. It is further stated that, likewise, court witness-2 Inspector, Ashwini Rathod in paras- 28, 29, 30, 38, 49, 58, 61, 63, 64 and 67 has described the active role played by CSP Smt. Ankita Sharma. It is also stated that the examination of the proposed witness would bring the truth and it would be just and necessary for a fair trial as well as for the just decision of the case.

5. The learned trial Court after dealing with the entire facts stated in the application and further taking into consideration the provisions of Section 311 of Cr. P.C. held that the proposed witness namely CSP Smt. Ankita Sharma has not played any role in the investigation of the crime and no single document is annexed in the entire charge sheet to establish her involvement in the investigation and thus rejected the application.

6. Learned counsel for the petitioner would submit that the petitioner has falsely been implicated in the case, even though he was not present in the territory of the State of Chhattisgarh and on 20.10.2020, he was brought from Talcher, District Angul, Odisha to Raipur and on 22.10.2020 F.I.R. was registered. He would submit that earlier WPCR No. 686/2020 was filed under Article 226 of the Constitution of India for CBI inquiry and that case was dismissed vide order dated 10.01.2022., against which a Criminal Appeal No. 634/2023 was preferred before the Hon'ble Supreme Court and same

was also dismissed vide order dated 28.02.2023 which is reported in 2023 SCC OnLine SC 204. He would invite the attention of this Court to para-22 of the judgment passed by the Hon'ble Supreme Court and would submit that while dismissing the petition preferred by the petitioner, the Hon'ble Supreme Court observed that "*On the other aspect also since the trial is under progress, appellant No. 1 would be entitled to put forth his case when the statement under Section 313 of Cr. P.C. is recorded and also he would be entitled to tender evidence if necessary*". It is also observed that "*the appellants in any event would have the further remedy of the legal course which is available to them if they are dissatisfied.*" He would argue that liberty has been granted by the Hon'ble Supreme Court to take the legal course after the recording of the statement under Section 313 of Cr. P.C. and liberty was also granted to tender evidence if necessary. He would submit that earlier also an application was moved under Section 311 of Cr. P.C. to examine those five police officials who brought the petitioner from Talcher, Odisha to Raipur and that application was dismissed by the trial Court vide order dated 07.03.2022. He would submit that Cr.M.P. No. 443/2022 was preferred and the same was allowed by this Court vide order dated 17.03.2022. He would next contend that in the written statement submitted before the trial Court, the petitioner has specifically pleaded that he was dropped at Kotwali Police Station and was interrogated by IPS Smt. Ankita Sharma and Police Inspector Ramakant Sahu and he was informed by IPS Smt. Ankita Sharma that some media persons have learnt about his arrest therefore, he had been shifted to Azad Chowk Police Station. He would further contend that court witness-2 Ashwini Rathod, Inspector, has admitted the fact that they were investigating the case in pursuance of oral instruction received from CSP Smt. Ankita Sharma. He has placed reliance upon the judgments passed by the Hon'ble Supreme in the matter of *State v. N. Seenivasagan*, (2021) 14 SCC 1; *Sarju Alias Ramu v. State of Uttar Pradesh*, (2009) 13 SCC 698 and *Godrej Pacific Tech. Limited v. Computer Joint India Limited*, (2008) 11 SCC 108.

7. On the other hand, learned State counsel would oppose and submit that the learned trial Court has rightly rejected the application moved by the petitioner under Section 311 of Cr. P.C. as the proposed witness is not a cited prosecution witness. He would further submit that there is no document submitted that the said proposed witness in any manner participated in the investigation. His next contention is that only on the basis of evidence of some of the police officials, a witness cannot be summoned. He would also argue that the application has been moved at the belated stage at the fag end of the trial; therefore, the petition filed by the petitioner deserves to be dismissed.

8. I have heard learned counsel of the parties and perused the

documents annexed with the instant petition.

9. It is not in dispute that the petitioner is facing trial for the commission of an offence punishable under Sections 22 (b), 29 and 27 of the NDPS Act. The prosecution witnesses have already been examined. The statement of the petitioner under Section 313 of Cr. P.C. has also been recorded. Earlier an application under Section 311 of Cr. P.C. was moved for summoning five police officials who brought the petitioner from Talcher, District Odisha to Raipur as they were not cited as prosecution witnesses, the application was rejected and thereafter Cr.M.P. No. 443/2022 was preferred and the coordinate bench of this Court vide order dated 17.03.2022 allowed the same. Two of the police officials, one PW-13 Sub-Inspector Priyesh John disclosed the role and part played by Smt. Ankita Sharma, the then CSP of Azad Chowk Police Station, Raipur. The relevant paragraphs i.e. paragraph no. 102, 103, 161, 181, 182, 183, 184, 217, 219 and 272 are quoted herein below:—

102. यह कहना सही है कि इस प्रकार का रोजनामचा सान्हा में इन्द्राज करने के बाद भी मेरे द्वारा प्रपी-2 में इस प्रकार के स्थान या परिसर का उल्लेख नहीं किया गया है । यह कहना सही है कि दिनांक 21.10.2020 को 15:15 बजे ही मुझे ज्ञात हो गया था कि सीएसपी साहब का सम्पर्क नहीं हो पा रहा है, स्वतः कहा कि फोन से मुखबिर सूचना मिलने के बाद सीएसपी आजाद चौक से मोबाईल फोन से संपर्क करने का प्रयास किया गया, फिर भी संपर्क नहीं हुआ था । आज मुझे ध्यान नहीं है कि सीएसपी साहब के कौन से मोबाईल नंबर पर दिनांक 21.10.2020 का 15:15 बजे मैंने संपर्क करने का प्रयास किया था ।

103. जिस समय मैंने प्रपी – 55 टिकेश्वर साहू को दिया था, उस समय मैंने उन्हें ऐसा नहीं बताया था कि सीएसपी साहब का दूरभाष से संपर्क नहीं हो पा रहा है । यह कहना सही है कि दिनांक 21.10.2020 का 15:50 बजे तक मुझे यह बात ज्ञात थी कि सीएसपी साहब का दूरभाष से संपर्क नहीं हो पा रहा है । यह कहना सही है कि आजाद चौक थाने से प्रपी:9 का प्रिन्टेड फार्म लेकर मैं दिनांक 21.10.2020 को आश्रम तिराहा खाना हुआ था । यह कहना सही है कि प्रपी-9 की सारी इबारत मेरी हस्तलिपि में लिखी गयी है ।

161. यह कहना सही है कि प्रपी-59 तैयार होने तक मेरी एवं नगर पुलिस अधीक्षक आजाद चौक रायपुर की कोई बातचीत नहीं हुयी थी । यह कहना सही है कि प्रपी-59 के स से स भाग पर उल्लेखित निर्देशानुसार सही नहीं है, स्वतः कहा कि प्रपी-59 प्रिंटेड प्रोफार्मा में है ।

181. यह कहना सही है कि दिनांक 21/10/2020 को थाना आजाद चौक की सीएसपी अंकिता शर्मा थी । आज मैं नहीं बता सकता कि दिनांक 21/10/2020 को कितने बजे सीएसपी अंकिता शर्मा आजाद चौक थाना आयी थी । यह कहना गलत है कि मैंने सीएसपी आजाद चौक को स्वयं प्रकरण की जानकारी दी थी, स्वतः कह कि थाना प्रभारी के माध्यम से सीएसपी आजाद चौक को जानकारी हुयी होगी ।

182. यह कहना सही है कि अक्टूबर 2020 में सीएसपी कार्यालय एवं थाना आजाद चौक एक ही परिसर में थे । यह कहना सही है कि दिनांक 21/10/2020 का समय 19:00 बजे तक इस प्रकरण में मैंने जो विवेचना की थी, उसकी जानकारी अश्वनी राठौर निरीक्षक का दी थी । आज मुझे याद नहीं है कि दिनांक 21/10/2020 का आईबीसी 24 चैनल के न्यूज रिपोर्टर कितने बजे थाना आजाद चौक आये थे मुझे जानकारी नहीं है कि जिस समय सीएसपी अंकिता शर्मा ने आईबीसी 24 चैनल को रिपोर्टर दिया था, उस समय मैं वहां था या नहीं । मुझे इस बात की जानकारी नहीं है कि न्यूज चैनल में दिखाने के लिए अभियुक्त रॉयडन को थाना आजाद चौक के लॉकअप से बाहर निकाला गया था या नहीं ।

183. मुझे यदि सीएसपी अंकिता शर्मा का उक्त वीडियो क्लिपिंग दिखाया जाये तो मैं सीएसपी अंकिता शर्मा को पहचान पाउंगा, यदि उक्त वीडियो क्लिपिंग में अभियुक्त रॉयडन की उपस्थिति होगी तो मैं अभियुक्त रॉयडन का भी पहचान पाउंगा ।

184. मुझे इस बात की जानकारी नहीं है कि घटना के समय एडिशनल एसपी (शहर) रायपुर के पद पर कौन पदस्थ थे । मुझे इस बात की जानकारी नहीं है कि दिनांक 30/10/2020 को एडिशनल एसपी (शहर) रायपुर एवं सीएसपी अंकिता शर्मा ने मिलकर आईबीसी 24 चैनल पर इंटरव्यू दिया था ।

217. साक्षी को प्रकरण में प्रस्तुत पेन ड्राईव आर्टिकल – एम दिखाकर पूछे जाने पर उक्त पेन ड्राईव की वीडियो क्लिपिंग दिनांक 21/10/2020 में जो स्थान दिख रहा है, वह

थाना आजाद चौक का होना स्वीकार किया। यह कहना सही है कि उक्त वीडियो क्लिपिंग दिनांक 21/10/2020 में अभियुक्त रॉयडन दिखायी दे रहा है। अभियुक्त रॉयडन के दोनो तरफ खड़े व्यक्ति आजाद चौक थाना में पदस्थ पुलिस कर्मचारी है, जिनका नाम मुझे आज याद नहीं है। उक्त वीडियो क्लिपिंग दिनांक 21/10/2020 में प्रशिक्षु आईपीएस / सीएसपी आजाद चौक अंकिता शर्मा उपस्थित दिख रही है। मैंने प्रकरण के संबंध में जो जानकारी तात्कालिक सीएसपी आजाद चौक अंकिता शर्मा ने मीडिया को दिया था, वह जानकारी उन्हें मेरे द्वारा नहीं दिया गया था एवं न ही उक्त जानकारी थाना प्रभारी अश्वनी राठौर को दिया था। सीएसपी आजाद चौक अंकिता शर्मा द्वारा मीडिया को ब्रीफ करने से पहले इस प्रकरण के संबंध में कोई जानकारी मुझसे नहीं ली थी। इस प्रकरण में प्रपी - 59 के अलावा मैंने अंकिता शर्मा सीएसपी को विवेचना की कोई जानकारी नहीं दी थी। आज मुझे याद नहीं है कि जिस समय सीएसपी अंकिता शर्मा ने उक्त पेन ड्राईव में रिकार्डेड बयान मीडिया के समक्ष प्रस्तुत किये थे, उस समय मैं थाना आजाद चौक में उपस्थित था या नहीं।

219. साक्षी को प्रकरण में प्रस्तुत पेन ड्राईव आर्टिकल - एम दिखाकर पूछे जाने पर उक्त पेन ड्राईव की वीडियो क्लिपिंग दिनांक 30/10/2020 में जो व्यक्ति मीडिया से बात कर रहे हैं, वे श्री लखन पटले, अतिरिक्त पुलिस अधीक्षक है तथा उनके एक ओर तात्कालीन सीएसपी आजाद चौक अंकिता शर्मा तथा दूसरी ओर अभिषेक माहेश्वरी, अति.पुलिस अधीक्षक भी उपस्थित है। मैंने दिनांक 21/10/2020 से दिनांक 30/10/2020 तक की अवधि में प्रकरण की विवेचना के संबंध में जानकारी श्री लखन पटले, अतिरिक्त पुलिस अधीक्षक एवं तात्कालीन सीएसपी आजाद चौक अंकिता शर्मा को नहीं दी थी। यह कहना सही है कि उक्त अवधि में प्रकरण की विवेचना से संबंधित जानकारी मेरे द्वारा थाना प्रभारी अश्वनी राठौर को दिया जाता रहा है। उक्त दिनांक 30/10/2020 से संबंधित वीडियो क्लिपिंग पुलिस कंट्रोल रूम रायपुर का है। उक्त वीडियो क्लिपिंग में लखन पटले अतिरिक्त पुलिस अधीक्षक के पीछे खड़ा व्यक्ति अभियुक्त पैट्रिक युबीके है। उक्त वीडियो क्लिपिंग में उपस्थित एक पुलिस अधिकारी उपनिरीक्षक अशोक मिश्रा है, तथा दो अन्य पुलिस कर्मचारी उपस्थित है, उन्हें मैं आज नहीं पहचान पा रहा हूँ।

272. मैं यह नहीं बता सकता कि श्री रमाकांत साहू एवं सी.एस.पी. श्रीमती अंकिता शर्मा के द्वारा आरोपीगण

को ड्रग्स पैडलिंग करने के संबंध में जानकारी मीडिया को किस आधार पर दिया गया । मैंने अपनी विवेचना के दौरान आरोपी हर्षवर्धन शर्मा के मोबाईल का परीक्षण नहीं किया था इसलिए मुझे उसके मोबाईल से ड्रग्स पैडलिंग या अन्य कोई अवैधानिक कार्य किये जाने के जानकारी नहीं मिली थी ।”

10. One more police official **Ashwini Rathod, Inspector, who has been examined as Court Witness-2, has also disclosed the part played by Smt. Ankita Sharma and the relevant paragraphs i.e. paragraph no. 28, 29, 30, 38, 49, 58, 61, 63, 64 and 67 are quoted herein below:—**

“28. यह कहना सही है कि माह अक्टूबर 2020 में थाना आजाद चौक के सीएसपी के पद पर श्रीमती अंकिता शर्मा पदस्थ थी । मैं आज नहीं बता सकता कि उक्त दिनांक को श्रीमती अंकिता शर्मा थाना आजाद चौक आयी थी अथवा नहीं । इस प्रकरण के अपराध की विवेचना के संबंध में श्रीमती अंकिता शर्मा को मैंने कोई जानकारी दिनांक 21/10/2020 का प्रदान नहीं की थी । दिनांक 21/10/2020 की रात का इस प्रकरण की विवेचना की जानकारी मैंने श्रीमती अंकिता शर्मा को दी थी, स्वतः कहा कि दूरभाष के माध्यम से जानकारी दी थी । उस समय श्रीमती अंकिता शर्मा ने मुझे ऐसा नहीं बताया था कि इस प्रकरण की विवेचना की जानकारी उन्हें पहले से है, स्वतः कहा कि इस संबंध में मेरे द्वारा जानकारी दी गयी, उन्हें इस प्रकरण के संबंध में पहले से पता था या नहीं, मैं नहीं बता सकता ।

29. मुझे इस बात की जानकारी नहीं है कि दिनांक 22/10/2020 का जब मैं थाना आजाद चौक ड्यूटी हेतु उपस्थित हुआ, उस समय दिनांक 21/10/2020 की रात को थाना आजाद चौक में श्रीमती अंकिता शर्मा एवं आई.बी.सी.— 24 के न्यूज रिपोर्टर उपस्थित हुए थे अथवा नहीं ।

30. मुझे इस बात की जानकारी नहीं है कि इस प्रकरण की विवेचना के संबंध में सीएसपी अंकिता शर्मा ने आई.बी.सी.— 24 के न्यूज रिपोर्टों को कोई साक्षात्कार दिया है या नहीं ।

38. इस प्रकरण की विवेचना की जानकारी मैंने दिनांक 21/10/2020 को सीएसपी अंकिता शर्मा का प्रदान की थी, ऐसा मैंने उपनिरीक्षक प्रियेश जॉन का नहीं बताया था, स्वतः कहा कि उपनिरीक्षक प्रियेश जॉन द्वारा संपूर्ण कार्यवाही की जानकारी मुझे दिया गया, जिसके आधार पर सीएसपी श्रीमती अंकिता शर्मा को मेरे द्वारा रात्रि में प्रकरण के संबंध में बताया गया । मैं आज यह नहीं बता सकता कि दिनांक 21/10/2020 को मुझे थाना आजाद चौक पर उपनिरीक्षक प्रियेश जॉन द्वारा जानकारी दी गयी थी या नहीं, मैं नहीं बता सकता ।

का रात्र न न थाना आजाद बाक पापस लाटा उस समय वहा पर सीएसपी श्रीमती अंकिता शर्मा और आईबीसी – 24 न्यूज चैनल के रिपोटर थाना में उपस्थित थे अथवा नही ।

49. इस प्रकरण की विवेचना के दौरान थाना आजाद चौक रायपुर की सीएसपी श्रीमती अंकिता शर्मा थी । यह कहना सही है कि चूंकि श्रीमती अंकिता शर्मा थाना आजाद चौक की वरिष्ठ अधिकारी थी, इसलिए इस प्रकरण की संपूर्ण कार्यवाही उनके दिशा-निर्देश पर की जा रही थी । यह कहना सही है कि कार्यवाही के संबंध में लिखित जानकारियां भी हमारे द्वारा सीएसपी श्रीमती शर्मा का दी जा रही थी । यह कहना सही है

कि सीएसपी श्रीमती शर्मा के द्वारा पर्यवेक्षण प्रतिवेदन के माध्यम से लिखित निर्देश दिये जाते थे । यह कहना सही है कि हम लोगों के द्वारा श्रीमती शर्मा सीएसपी के आदेश पर विवेचना की कार्यवाही की जा रही थी, स्वतः कहा कि जिस समय धारा 42 एनडीपीएस एक्ट की सूचना सीएसपी कार्यालय में दी गयी थी, उस दौरान वह कार्यालय में नहीं थी ।

58. यह कहना सही है कि प्रकरण की विवेचना कार्यवाही के अनुक्रम में दिनांक 09/12/2020 को 14:20 बजे में, प्रियेश जॉन तथा प्रधान आरक्षक 1381, आरक्षक 28, महिला आरक्षक 2102 के साथ आरोपी हर्षवर्धन की पतासाजी के लिए उसके निवास स्थान न्यू राजेन्द्र नगर रायपुर गये थे । हम लोग सीएसपी श्रीमती अंकिता शर्मा के मौखिक आदेश पर आरोपी हर्षवर्धन शर्मा के निवास पर गये थे । राजेन्द्र नगर पहुँचने के बाद हम लोग आरोपी हर्षवर्धन शर्मा के निवास स्थान पर खड़े गाड़ियों के पास खड़े थे । यह कहना सही है कि उस दौरान आरोपी हर्षवर्धन शर्मा वहां मौजूद नहीं था, वहां पर आरोपी हर्षवर्धन शर्मा की माता ममता शर्मा मौजूद थी एवं अन्य दो – तीन लड़कियां वहां पर मौजूद थी ।

61. यह कहना सही है कि इस प्रकरण में आरोपी हर्षवर्धन शर्मा के परिजनों के द्वारा सीएसपी अंकिता शर्मा एवं हम लोगों के खिलाफ शिकायत की गयी थी, जिसके संबंध में मेरे, सीएसपी अंकिता शर्मा एवं अन्य लोगों के बयान हुए थे । मुझे इस बात की जानकारी नहीं है कि हमें आदेशित करने के पूर्व लगभग 2:00 बजे श्रीमती अंकिता शर्मा सीएसपी आरोपी हर्षवर्धन शर्मा के निवास पर गयी थी या नहीं । यह कहना सही है कि हम लोग सीएसपी अंकिता शर्मा के निर्देश पर न्यू राजेन्द्र नगर गये थे । मुझे इस बात की जानकारी नहीं है कि श्रीमती अंकिता शर्मा सीएसपी ने आरोपी हर्षवर्धन का अपने साथ लेकर आ गयी थी या नहीं ।

63. मुझे इस बात की जानकारी नहीं है कि इस शिकायत के आधार पर सीएसपी अंकिता शर्मा का भी बयान लेखबद्ध हुआ था या नहीं । मुझे इस बात की जानकारी नहीं है कि उक्त बयान में सीएसपी अंकिता शर्मा द्वारा आरोपी हर्षवर्धन शर्मा के यहां दोपहर 02:00 बजे जाने का कथन किया गया था या नहीं ।

64. यह कहना सही है कि हमारे समक्ष राजेन्द्र नगर के आरोपी हर्षवर्धन शर्मा के निवास में स्थित जिस वाहन की तलाशी

आरक्षक के द्वारा ली गयी थी, उसमें कोई भी नशीला पदार्थ नहीं मिला था, अब साक्षी कहता है कि दिनांक 09/12/2020 को सीएसपी आजाद चौक अंकिता शर्मा के मौखिक आदेश पर आरोपी हर्षवर्धन शर्मा के निवास सीन पर हमराह स्टाफ गया था, उनके निवास स्थान पहुँचने पर राजेन्द्र नगर रायपुर पुलिस के उपनिरीक्षक सिद्धार्थ मिश्रा एवं अन्य स्टाफ पूर्व से ही आरोपी के निवास स्थान पर उपस्थित थे, आरोपी के कार की तलाशी पर उन्हें मादक पदार्थ मिला था, चूंकि उक्त घटना स्थल थाना राजेन्द्र नगर रायपुर के क्षेत्र में होने के कारण अग्रिम कार्यवाही थाना न्यू राजेन्द्र नगर द्वारा की गयी, जिसका उल्लेख थाना न्यू राजेन्द्र नगर रायपुर के रोजनामचा सान्हा क. 30, दिनांक 09/12/2020 में दर्ज है ।

67. यह कहना सही है कि आरोपी हर्षवर्धन शर्मा की पतासाजी के लिए राजेन्द्र नगर रायपुर जाने का आधार सीएसपी अंकिता शर्मा का मौखिक आदेश था, स्वतः कहा कि साक्षी हरकिरण कौर के धारा 161 दंप्रसं का कथन भी था ।"

11. After the evidence of the prosecution is over before the Court, the statement of the accused is recorded and this right is confirmed upon an accused according to the provision of Section 313 of Cr. P.C. After recording of the statement under Section 313 of Cr. P.C., the stage of defence evidence of an accused starts. The courts must grant the accused an opportunity to produce any evidence to defend his case. This defence can be oral and documented evidence, this includes any witness that the defendant might be bound to produce before the Court. However, the burden of proof lies upon the prosecution; therefore, it becomes obligatory on the part of the accused to rebut the evidence adduced by the prosecution against him. Therefore, it cannot be said that the application was not moved by the petitioner under Section 311 of Cr. P.C. at the appropriate stage.

12. Section 313 of Cr. P.C. provides for examination of accused. It reads as under:—

"313. Power to examine the accused. - (1) In every inquiry or trial, for the purpose of enabling the accused personally to explain any circumstances appearing in the evidence against him, the Court

(a) may at any stage, without previously warning the accused put such questions to him as the Court considers necessary;

(b) shall after the witnesses for the prosecution have been examined and before he is called on for his defence question him generally on the case:

Provided that in a summons-case where the Court has dispensed with the personal attendance of the accused, it may also dispense with his examination under clause (b).

(2) No oath shall be administered to the accused when he is examined under sub-section (1).

(3) The accused shall not render himself liable to punishment by refusing to answer such questions, or by giving false answers to them.

(4) The answers given by the accused may be taken into consideration in such inquiry or trial, and put in evidence for or against him in any other inquiry into, or trial for, any other offence which such answer may tend to show he has committed.

(5) The Court may take help of Prosecutor and Defence Counsel in preparing relevant questions which are to be put to the accused and the Court may permit filing of written statement by the accused as sufficient compliance of this section."

13. Section 313 of Cr. P.C. has given ample power to the Court to summon any person as a witness at any stage of inquiry, trial or other proceeding. The power is not confined to any particular class or person, if the conditions provided under Section 311 of Cr. P.C. are satisfied the court can call a witness not only on the motion of either the prosecution or the defence but also it can be called by the Court itself. The conditions enumerated in Section 311 of Cr. P.C. are that the evidence should be essential to the just decision of the case.

14. While dealing with the issue of Section 311 of Cr. P.C., the Hon'ble Supreme Court in the matter of *Rajaram Prasad Yadav v. State of Bihar*, AIR 2013 SCW 4179, held as under:—

"23. From a conspectus consideration of the above decisions, while dealing with an application under Section 311 Cr. P.C., read along with Section 138 of the Evidence Act, we feel the following principles will have to be borne in mind by the Courts:

- a) Whether the Court is right in thinking that the new evidence is needed by it? Whether the evidence sought to be led in under Section 311 is noted by the Court for a just decision of a case?
- b) The exercise of the widest discretionary power under section 311, Cr. P.C., should ensure that the 1 AIR 2013 SCW 4179 5 judgment should not be rendered on inchoate, inconclusive speculative presentation of facts, as thereby the ends of justice would be defeated.
- c) If evidence of any witness appears to the Court to be essential to the just decision of the case, it is the power of the Court to summon and examine or recall and reexamine any such person.
- d) The exercise of power under section 311, Cr. P.C., should be resorted to only with the object of finding out the truth or obtaining proper proof for such facts, which will lead to a just

and correct decision of the case.

- e) The exercise of the said power cannot be dubbed as filling in a lacuna in a prosecution case, unless the facts and circumstances of the case make it apparent that the exercise of power by the Court would result in causing serious prejudice to the accused, resulting in miscarriage of justice.*
- f) The wide discretionary power should be exercised judiciously and not arbitrarily.*
- g) The Court must satisfy itself that it was in every respect essential to examine such a witness or to recall him for further examination in order to arrive at a just decision of the case.*
- h) The object of section 311, Cr. P.C., simultaneously imposes a duty on the Court to determine the truth and to render a just decision.*
- i) The Court arrives at the conclusion that additional evidence is necessary, not because it would be impossible to pronounce the judgment without it, but because there would be a failure of justice without such evidence being considered.*
- j) Exigency of the situation, fair play and good sense should be the safeguard, while exercising the discretion. The Court should bear in mind that no party in a trial can be foreclosed from correcting errors and that if proper evidence was not adduced or a relevant material was not brought on record due to any inadvertence, the Court should be magnanimous in permitting such mistakes to be rectified.*
- k) The Court should be conscious of the position that after all the trial is basically for the prisoners and the Court should afford an opportunity to them in the fairest manner possible. In that parity of reasoning, it would be safe to err in favour of the accused getting an opportunity rather than protecting the prosecution against possible prejudice at the cost of the accused. The Court should bear in mind that improper or capricious exercise of such a discretionary power, may lead to undesirable results.*
- l) The additional evidence must not be received as a disguise or to change the nature of the case against any of the party.*
- m) The power must be exercised keeping in mind that the evidence that is likely to be tendered, would be germane to the issue involved and also ensure that an opportunity of rebuttal is given to the other party.*
- n) The power under section 311 Cr. P.C., must therefore, be invoked by the Court only in order to meet the ends of justice for strong and valid reasons and the same must be exercised*

with care, caution and circumspection. The Court should bear in mind that fair trial entails the interest of the accused, the victim and the society and, therefore, the grant of fair and proper opportunities to the persons concerned, must be ensured being a constitutional goal, as well as a human right."

15. In *Sarju alias Ramu* (supra), the Hon'ble Supreme Court in paragraph No. 15 and 16 held as under:—

"15. The statement of DW 1, Smt. Kusum Devi, the wife of the appellant that they had been sitting near the gate of the Superintendent of Police at Barabanki had not been denied or disputed. The fact that an application as also a telegram had been sent has also not been denied or disputed. In a case of this nature, at least, for fair investigation, if not the prosecution, the learned Special Judge himself should have exercised his jurisdiction under Section 311 of the Code of Criminal Procedure. He should have called the Superintendent of Police and recorded his statement; he could have also called for the original telegram from the Superintendent of Police and recorded his statement; he could have also called for the original telegram from the Superintendent of Police's office or even from the post office.

16. In a case under the NDPS Act, particularly where such serious allegations are made against the police officials, recovery of contraband in presence of the independent witness assumes significance. (See Ritesh Chakarvarti v. State of M.P., (2007) 1 SCC (Cri) 744)"

16. In *N. Seenivasagan* (supra), the Hon'ble Supreme Court in paragraph No. 12 and 13 observed thus:—

"12. In our view, having due regard to the nature and ambit of Section 311 of the CrPC, it was appropriate and proper that the applications filed by the prosecution ought to have been allowed. Section 311 provides that any court may, at any stage of any inquiry, trial or other proceedings under CrPC, 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". The true test, therefore, is whether it appears to the Court that the evidence of such person who is sought to be recalled is essential to the just decision of the case.

13. In Manju Devi v. State of Rajasthan, (2019) 6 SCC 203, a two-Judge Bench of this Court noted that an application under Section 311 could not be rejected on the sole ground that the case had been pending for an inordinate amount of time (ten years there). Rather,

it noted than : (SCC p. 209, para 13)

"13. ... the length/duration of a case cannot displace the basic requirement of ensuring the just decision after taking all the necessary and material evidence on record. In other words, the age of a case, by itself, cannot be decisive of the matter when a prayer is made for examination of a material witness".

Speaking for the Court, Dinesh Maheshwari J, expounded on the principles underlying Section 311 in the following terms. (Manju Devi case, SCC pp. 207-08, para 10)

"10. It needs hardly any emphasis that the discretionary powers like those under Section 311 CrPC are essentially intended to ensure that every necessary and appropriate measure is taken by the Court to keep the record straight and to clear any ambiguity insofar as the evidence is concerned as also to ensure that no prejudice is caused to anyone. The principles underlying Section 311 CrPC and amplitude of the powers of the court thereunder have been explained by this Court in several decisions. In Natasha Singh v. CBI, (2013) 5 SCC 741, though the application for examination of witnesses was filed by the accused but, on the principles relating to the exercise of powers under Section 311, this Court observed, inter alia, as under: (Natasha Singh case, SCC pp. 746 & 748-49, paras 8 & 15)

'8. Section 311 CrPC empowers the court to summon a material witness, or to examine a person present at "any stage" of "any enquiry", or "trial", or "any other proceedings" under Cr. P.C., or to summon any person as a witness, or to recall and re-examine any person who has already been examined if his evidence appears to it, to be essential to the arrival of a just decision of the case. Undoubtedly, CrPC has conferred a very wide discretionary power upon the court in this respect but such a discretion is to be exercised judiciously and not arbitrarily. The power of the court in this context is very wide, and in exercise of the same, it may summon any person as a witness at any stage of the trial, or other proceedings. The court is competent to exercise such power even suo motu if no such application has been filed by either of the parties. However, the court must satisfy itself, that it was in fact essential to examine such a witness, or to recall him for further examination in order to arrive at a just decision of the case.

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15. The scope and object of the provision is to enable the court to determine the truth and to render a just decision after discovering all relevant facts and obtaining proper proof of such facts, to arrive at a just decision of the case. Power must be

exercised judiciously and not capriciously or arbitrarily, as any improper or capricious exercise of such power may lead to undesirable results. An application under Section 311 CrPC must not be allowed only to fill up a lacuna in the case of the prosecution, or of the defense, or to the disadvantage of the accused, or to cause serious prejudice to the defence of the accused, or to give an unfair advantage to the opposite party. Further, the additional evidence must not be received as a disguise for retrial, or to change the nature of the case against either of the parties. Such a power must be exercised, provided that the evidence that is likely to be tendered by a witness, is germane to the issue involved. An opportunity of rebuttal however, must be given to the other party. The power conferred under Section 311 CrPC must therefore, be invoked by the court only in order to meet the ends of justice, for strong and valid reasons, and the same must be exercised with great caution and circumspection. The very use of words such as "any court", "at any stage", or "or any enquiry, trial or other proceedings", "any person" and "any such person" clearly spells out that the provisions of this section have been expressed in the widest possible terms, and do not limit the discretion of the court in any way There is thus no escape if the fresh evidence to be obtained is essential to the just decision of the case. The determinative factor should therefore be, whether the summoning/recalling of the said witness is in fact, essential to the just decision of the case."

(emphasis in original)

17. In *Godrej Pacific Tech. Limited* (supra), the Hon'ble Supreme Court in para - 06 held as under:—

"6. "26. *In this context, reference may be made to Section 311 of the Criminal Procedure Code which 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.'

The section is manifestly in two parts. Whereas the word used in the first part is 'may', the second part uses shall'. In consequence, the first part gives purely discretionary authority to a criminal court and enables it at any stage of an enquiry, trial or proceeding under the Code (a) to summon anyone as a witness, or (b) to examine any person present in the court, or (c) to recall

and re-examine any person whose evidence has already been recorded. On the other hand, the second part is mandatory and compels the court to take any of the aforementioned steps if the new evidence appears to it essential to the just decision of the case. This is a supplementary provision enabling, and in certain circumstances imposing on the court the duty of examining a material witness who would not be otherwise brought before it. It is couched in the widest possible terms and calls for no limitation, either with regard to the stage at which the powers of the court should be exercised, or with regard to the manner in which it should be exercised. It is not only the prerogative but also the plain duty of a court to examine such of those witnesses as it considers absolutely necessary for doing justice between the State and the subject. There is a duty cast upon the court to arrive at the truth by all lawful means and one of such means is the examination of witnesses of its own accord when for certain obvious reasons either party is not prepared to call witnesses who are known to be in a position to speak important relevant facts.

27. 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 or 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 the 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 any inquiry or trial or other proceedings 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 wider the power the greater is the necessity for application of judicial mind.

28. As indicated above, the section is wholly discretionary. The second part of it imposes upon the Magistrate an obligation : it is, that the court shall summon and examine all persons whose evidence appears to be essential to the just decision of the case. It is a cardinal rule in the law of evidence that the best available evidence should be brought before the court. Sections 60, 64 and 91 of the Evidence Act, 1872 (in short 'the Evidence Act') are

based on this rule. The court is not empowered under the provisions of the Code to compel either the prosecution or the defence to examine any particular witness or witnesses on their side. This must be left to the parties. But in weighing the evidence, the court can take note of the fact that the best available evidence has not been given, and can draw an adverse inference. The court will often have to depend on intercepted allegations made by the parties, or on inconclusive inference from facts elicited in the evidence. In such cases, the court has to act under the second part of the section. Sometimes the examination of witnesses as directed by the court may result in what is thought to be 'filling of loopholes'. That is purely a subsidiary factor and cannot be taken into account. Whether the new evidence is essential or not must of course depend on the facts of each case, and has to be determined by the Presiding Judge.

29. The object of Section 311 is to bring on record evidence not only from the point of view of the accused and the prosecution but also from the point of view of the orderly society. If a witness called by the court gives evidence against the complainant he should be allowed an opportunity to cross-examine. The right to cross-examine a witness who is called by a court arises not under the provisions of Section 311, but under the Evidence Act which gives a party the right to cross-examine a witness who is not his own witness. Since a witness summoned by the court could not be termed a witness of any particular party the court should give the right of cross-examination to the complainant. These aspects were highlighted in Jamatraj Kewalji Govani v. State of Maharashtra, AIR 1968 SC 178."

The above position was highlighted in Zahira Habibullah Sheikh (5) v. State of Gujarat (2006) 3 SCC 374. SCC pp. 391-93, paras 26-29.

18. Now coming to the facts of the present case in light of judgments passed by the Hon'ble Supreme Court, it appears that the petitioner moved an application under Section 311 of Cr. P.C. for summoning and examining Smt. Ankita Sharma, CSP, as a court witness on the ground that she had played an active role in the investigation of the case. The witnesses PW-13 namely Priyesh John, Sub-Inspector and court witness-2 namely Ashwini Rathod, Inspector, have categorically stated that there was involvement of Smt. Ankita Sharma, CSP, in the investigation and the petitioner was interrogated by the said Officer. The evidence of such a witness appears to be essential for the just decision of the case and it has been satisfied that it was essential to examine such a witness to arrive at a just decision of the case. The learned trial Court ought to have exercised the powers

given under Section 311 of Cr. P.C. by allowing the application. In the circumstances of the present case, in the interest of justice, the witness may be allowed to be examined by calling said witness.

19. As a result, following the principles as laid down by the Hon'ble Supreme Court in the above-referred judgments, I am inclined to allow the application moved by the petitioner under Section 311 of Cr. P.C. Accordingly, it is ordered that the impugned order dated 13.06.2023 passed by the Special Judge, (NDPS) Raipur (C.G.) in Special Case No. 87/2020 is hereby set aside. The application under Section 311 of Cr. P.C. moved by the petitioner is allowed. The witness namely Smt. Ankita Sharma, the then CSP, Police Station Azad Chowk, Raipur is allowed to be called as a witness so that the petitioner may get the liberty to examine and elicit the truth even by cross-examination after the chief.

20. With the aforesaid observation(s), this petition stands disposed of.

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