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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Criminal Revision Petition No.405 of 2010

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09.08.2010

GOVT. OF NCT, DELHI

..... Petitioner

Through: Mr. Rajeshwar Singh, Advocate.

Versus

ANANG PAL & ORS.

.....Respondents

Decided on: 9th August, 2010

JUSTICE SHIV NARAYAN DHINGRA

1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the reporter or not?
3. Whether judgment should be reported in Digest?

J U D G M E N T

SHIV NARAYAN DHINGRA, J. (ORAL)

1. By this petition, the petitioner has assailed an order dated 16th July, 2010 passed by learned Sessions Judge whereby the learned Sessions Judge only partly allowed the request of the petitioner of summoning additional witnesses and declined to summon some of the witnesses.

2. The petitioner herein had made an application under Section 311 Cr.P.C. with a prayer that all those police officials whose names were not in the list of witnesses filed along with charge sheet but whose statement under Section 161 Cr.P.C. had been recorded and were available on judicial file should be summoned by the court in the interest of justice. It must be remembered that this application was made after 7 ½ years of the accused persons being in judicial custody and after about 7 years of filing of charge sheet. The police in this case had filed two charge sheets one on 30th May, 2003 and

second on 28th June, 2003 after further investigation and the names of these witnesses do not appear in either of the list of witnesses. The learned Additional Sessions Judge after considering the prayer for calling additional witnesses, allowed prayer for examination of S.I. Surjit Singh and Dr. Prashant Kumar and allowed the application to this extent. A.S.I. Fazal Ali was dropped by the petitioner. Examination of remaining witnesses was disallowed.

3. It is contended by counsel for the petitioner that the application was wrongly disallowed and since the statements under Section 161 Cr.P.C. of these witnesses were already on record, these witnesses should have been examined by the court in the interest of justice.

4. Section 311 Cr.P.C. reads as under :-

***“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.”*

It is apparent from above provision that recalling of a witness is not a mere ritual and the court at any stage for whims and fancies of the prosecution or of the accused has to summon any person as a witness. Power under Section 311 Cr.P.C. has been given to the trial court for summoning or recalling any person as a witness at any stage during the trial only if the evidence of such persons appears to the court to be essential for the just decision of the case. Thus, the necessary requirement for recalling/re-examining or summoning any witnesses is that the evidence of such witness should appear to be essential for just decision of the case. The petitioner has not even stated as to how the

examination of all those persons whose statement under Section 161 Cr.P.C. was recorded during investigation was essential for just decision of the case. There is reference as to what was their statement and how it was relevant and necessary for just decision of the case.

5. During investigation, police records statements of several persons under Section 161 Cr.P.C. These statements were recorded to maintain a record of the investigation as to what investigation was being done. It is not necessary that every person whose statement under Section 161 Cr.P.C. is recorded by the police should be cited as a witness. Only those persons are cited by police/prosecution as witnesses who have to depose in the court about some facts relevant to the commission of crime and those persons whose testimony is not relevant for proving commission of crime, are dropped by the prosecution. If after having dropped several persons from list of witnesses prosecution wants that some of them or all of them should be examined, the prosecution must show to the court how the testimony of each one of them was relevant for the purpose of proving the guilt of the accused and how his testimony was going to be helpful for the just decision of the case. For this purpose, prosecution has to deal with each witness which prosecution wants the court to be summoned and has to tell on what point the testimony of each one of them was essential, why the witness was not earlier cited and why it was necessary to examine him now. Unfortunately in the present case, the prosecution has not disclosed as to how the testimony of the persons whose statements under Section 161 Cr.P.C. were recorded by police was necessary for just decision of the case. The prosecution also did not explain why the prosecution made this application at such a belated stage after about 7 years of filing of the charge sheet.

6. I consider that there was no infirmity in the order of the learned trial court. The petition is bereft of any substance and is liable to be dismissed and the same is hereby dismissed.

**AUGUST 09, 2010
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**SHIV NARAYAN DHINGRA
[JUDGE]**