

*** IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of Order: November 11, 2010

+ Crl. Rev. 712/2010

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11.11.2010

Manoj & Anr.

... Appellant

Through: Mr.Pradeep Rana, Adv. and
Mr.Sumit Choudhary, Adv.

Versus

State

... Respondent

Through: Mr.Pawan Sharma, Standing
Counsel for NCT, Delhi

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?

ORDER (ORAL)

1. The petitioner is aggrieved by an order dated 23.10.2010 passed by the learned ASJ on an application under Section 311 Cr.P.C. whereby the learned ASJ recalled PW-20, SI S.S.Sandhu for re-examination. The learned ASJ observed that after going through the testimony of PW-20 it turned out that during cross-examination he pointed out important call details collected by him after moving application on request of A.C.P. However, these call details and his application were not pointed out by him from the record at the time of testimony. He was the initial Investigating Officer and, therefore, it was considered necessary that he should be recalled so that these call details collected by him are proved. The trial court considered that it was a fit case for exercise of power under Section 311 Cr.P.C. The documents to be pointed out by witness were already on record.

2. It is submitted by counsel for the petitioner that application under Section 311 Cr.P.C. was moved by prosecution at the stage when arguments were going on. He submitted that this application was an effort to fill up the lacuna as during arguments it transpired that call details had not been exhibited by this witness. He submitted that Section 311 cannot be used to fill up the lacuna.

3. In any criminal trial it has to be the effort of the court to do justice and take into account all evidence in order to come at a right decision. The trial court has to endeavour to find out the truth. The witness in this case has been recalled only to prove the application made by him for collecting call details and the call details collected by him. Thus, the evidence is of such a nature which cannot be fabricated or manufactured and is already on record but due to inadvertence or negligence of prosecution could not be exhibited. I consider that when the court finds that such an evidence was necessary for proper adjudication of the case, the Court can always recall such a witness. The powers under Section 311 Cr.P.C. are quite extensive and can be exercised to do justice. Justice does not mean helping accused or helping prosecution. It only means that the Court should know the truth and then give decision. I find that the trial court rightly exercised power under Section 311 Cr.P.C. There is no infirmity in the order of the trial court. The Revision is liable to be dismissed and is hereby dismissed.

November 11, 2010
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SHIV NARAYAN DHINGRA, J.