



CRM-M-15180-2024

1

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

(121) CRM-M-15180-2024
Date of Decision:-30.05.2024

Sandeep alias Sonu
.....Petitioners

Versus

State of Haryana
.....Respondents

CORAM: HON'BLE MR. JUSTICE ALOK JAIN

Present: Mr. Namit Khurana, Advocate for the petitioner.
Mr. Tanuj Sharma, AAG, Haryana.

ALOK JAIN, J.

1. The Present petition has been filed for quashing of the order dated 07.03.2024 (Annexure P-5), passed by Ld. Additional Sessions Judge, Karnal in FIR No. 350 dt. 28.04.2021 u/s 20 & 25 NDPS Act, registered at P.S City Karnal, whereby the application filed by the petitioner/accused for recalling of the witnesses, i.e. PW-1 ASI Vikram Singh and PW-4 SI Jaswinder Singh under Section 311 of Cr.P.C. for further cross-examination was dismissed.

2. The background facts of the case which emerge on perusal of the paper book are as under:

**CRM-M-15180-2024****2**

- i. An FIR was registered with the allegations that the IO in the present case received a secret Information from an informer that Sandeep Kumar @ Sonu son of Nakli Singh, resident of Karnal, who already stands convicted in an NDPS case is indulging in the sale and purchase of narcotics and is currently selling *Sulfa* near New Grain Market, Bazida Road, Karnal on his scooty bearing registration no. HR- 05BD-7803 and is having charas with him and if a raid is conducted he can be caught red handed. On this information, the IO prepared a notice under section 42 of the NDPS Act and sent the same to PS City, Karnal. IO along with other officials reached near New Grain Market, Bazida Road, Karnal to conduct a raid, where a young man was sitting on his scooty and on the pointing of informer the accused was apprehended and interrogated. On interrogation by the IO, he disclosed his name as Sandeep Kumar @ Sonu son of Nakli Singh, resident of 1961, Gali no.1, Shanti Nagar, Karnal who allegedly had a bag with 1kg 715 gm *Sulfa*(Charas) in it. As the accused could not produce any licence or permit *qua* the recovered *Sulfa*, a case under section 20 and 25 of the NDPS Act was registered.
- ii. The trial commenced and the prosecution evidence was duly recorded. The testimony of material witnesses i.e. PW - 1 ASI

**CRM-M-15180-2024****3**

Vikram Singh and PW - 4 SI Jaswinder Singh was recorded on dated 22.04.2022 and 25.01.2023 respectively.

iii. That during the pendency of the said trial, the petitioner on 07.03.2024 moved an application u/s 311 of Cr.P.C. for recalling of the witnesses PW-1 ASI Vikram Singh and PW-4 SI Jaswinder Singh for further cross-examination. It was submitted that though the said witnesses have been cross-examined by Shri Des Raj Goyal, (previous counsel of accused), but due to the reasons best known to him, the learned previous counsel had not asked some material / relevant questions from the said witnesses, whereas the said questions from the aforesaid witnesses are necessary to be asked for just and fair decision of the case. It is further stated that if the witnesses would not be allowed to be recalled for further examined in the court, the petitioner/accused would suffer irreparable loss.

iv. The application under Section 311 of Cr.P.C. was dismissed by the Ld. Additional Sessions Judge, Karnal on 07.03.2024, hence, the present quashing petition.

3. Learned counsel for the petitioner submits that the Ld. ASJ, Karnal had erred and fell into grave error while declining the application for recalling of witnesses for their further cross- examination. Moreover, great prejudice would be caused to the petitioner-accused if the

**CRM-M-15180-2024****4**

application under Section 311 of Cr.P.C. is not allowed. He further submits that the Ld. ASJ, Karnal has failed to appreciate the facts and legal position of the case. The Ld. Court has failed to appreciate that the re-calling would prove that the allegations against the petitioner are concocted that the petitioner has been falsely implicated in the present case.

4. Learned Counsel for the petitioner emphatically submitted that the witnesses proposed to be recalled have not been cross-examined on material aspects like of recovery part, notice issued, mandatory compliance as per provisions of NDPS act, hence, the recalling of these witnesses is essential for the just decision of the case.

5. Learned Counsel for the petitioner further submitted that the Ld. Trial Court further failed to appreciate that certain relevant questions were required to be asked to these material witnesses and if the same is not allowed the petitioner would suffer egregious loss.

6. Counsel for the petitioner also tried to persuade that the Ld. ADJ, Karnal failed to appreciate that previous counsel of the petitioner/accused did not effectively cross-examine PW1 ASI Vikram Singh and PW4 SI Jaswinder Singh and no material/ relevant question was put to the said witnesses, which were necessary and essential for just decision of the case. It was further submitted that no specific question on



CRM-M-15180-2024

5

the aspects deposed by such witnesses have been asked in order to obtain discrepancies/ inconsistencies in their statements.

7. Learned Counsel for the petitioner to substantiate his averments relied upon the following judgements of the Hon'ble Supreme Court, the relevant paragraphs of which are reproduced as under:-

I. Vijay Kumar v. State of U.P., (2011) 8 SCC 240

"Though Section 311 confers vast discretion upon the court and is expressed in the widest possible terms, the discretionary power under the said section can be invoked only far the ends of justice. Discretionary power should be exercised consistently with the provisions of CrPC the and principles of criminal law. The discretionary power conferred under Section 311 has to be exercised judicially for reasons stated by the court and not arbitrarily or capriciously."

II. Zahira Habibullah Sheikh v. State of Gujarat (2006) 2 SCC (Cri) 8

"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 ambiguity in record or leaving the statements of the witnesses examined from either side."

III. Swapan Kumar Chatterjee Central Bureau of Investigation, (2019) 14 SCC 328



CRM-M-15180-2024

6

"It is well settled that the power conferred under Section 311 should be invoked by the court only to meet the ends of justice. The power is to be exercised only for strong and valid reasons and it should be exercised with great caution and circumspection. The court has vide power under this section to even recall witnesses for re-examination or further examination, necessary in the interest of justice but the to be consideration exercised after taking into the facts and circumstances of each case. The power under this provision shall not be exercised if the court is of the view that the application has been filed as an abuse of the process of law."

8. *Per Contra*, learned state counsel has fervently opposed the present petition and has submitted that mere change of counsel cannot be a relevant ground to allow an application under Section 311 of Cr.P.C. as it would lead to unnecessary delay in the conclusion of trial. He further submitted that the Learned ASJ, Karnal passed a reasoned order by observing that the petitioner in his application under Section 311 of Cr.P.C. did not state the specific questions which were purportedly omitted to be asked to PW-1 and PW-4 by his previous counsel. The petition having no merit, deserves to be dismissed.

9. I have considered submissions of both the sides and have appraised the record carefully.

10. It is necessary to reproduce Section 311 of Cr.P.C., which reads as under:



CRM-M-15180-2024

7

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 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.

11. Before alluding to the merits of the case, it is pertinent to dwell on the legal position vis-à-vis Section 311 of Cr.P.C.as articulated by the Hon'ble Supreme Court in a plethora of judgments.

12. The nature and scope of Section 311of Cr.P.C. was comprehensively enunciated by the Apex Court in ***State of West Bengal v. Tulsidas Mundhra, (1963) 2 SCJ 204 at 207*** and in the case of ***Jamatraj Kewalji Govani v. State of Maharashtra, (1967) 3 SCR 415*** whereby it was observed that Section 311 of Cr.P.C.along with section 165 of the Indian Evidence Act empowered the Criminal and Civil Courts as the case may be, to summon and examine witnesses. The Court in order to discover or to obtain proof of relevant facts is empowered to exercise all the privileges and powers and "*these two sections between them confer jurisdiction on the Judge to act in aid of justice.*"

13. In the case of ***Jamatraj Kewalji Govani (Supra)***wherein Hidayatullah, J., while expounding the unfettered discretionary power of



CRM-M-15180-2024

8

the Court as envisaged under Section 540 of the Code (Section 311 of Cr.P.C., 1973) has stated thus (at pp. 182-83) :

"It is difficult to limit the power under our Code to cases which involve something arising ex-improvisé which no human ingenuity could foresee, in the course of the defence. Our Code does not make this a condition of the exercise of the power and it is not right to embark on judicial legislation. Cases that go far are of course not quite right. Indeed they could be decided on fact because it can always be seen whether the new matter is strictly necessary for a just decision and not intended to give an unfair advantage to one of the rival sides... It would appear that in our criminal jurisdiction, statutory law confers a power in absolute terms to be exercised at any stage of the trial to summon a witness or examine one present in court or to recall a witness already examined, and makes this the duty and obligation of the Court provided the just decision of the case demands it. In other words, where the court exercises the power under the second part, the inquiry cannot be whether the accused has brought anything suddenly or unexpectedly but whether the court is right in thinking that the new evidence is needed by it for a just decision of the case. If the court has acted without the requirements of a just decision, the action is open to criticism but if the court's action is supportable as being in aid of a just decision the action cannot be regarded as exceeding the jurisdiction."

14. The Apex Court in ***Mohanlal Shamji Soni v. Union of India*** (1991) Supp (1) SCC 271 gave the gist of the Section 311 of Cr.P.C. as it



CRM-M-15180-2024

9

obtained from various decisions of this Court, namely *Rameshwar Dayal v. State of U.P. (1978) 2 SCC 518*; *State of W.B. v. Tulsidas Mundhra (1963) Supp 1 SCR 1*; *Jamatraj Kewalji Govani v. State of Maharashtra (1967) 3 SCR 415*; *Masalti v. State of U.P. (1964) 8 SCR 133*; *Rajeswar Prosad Misra v. State of W.B. (1966) 1 SCR 178*; and *R.B. Mithani v. State of Maharashtra (1971) 1 SCC 523*, the Court held:

“The principle of law that emerges from the views expressed by this Court in the above decisions is that the criminal court has ample power to summon any person as a witness or recall and re-examine any such person even if the evidence on both sides is closed and the jurisdiction of the court must obviously be dictated by exigency of the situation and fair play and good sense appear to be the only safe guides and that only the requirements of justice command the examination of any person which would depend on the facts and circumstances of each case.”

15. In the famous Best Bakery case i.e. *Zahira Habibullah H. Sheikh and another v. State of Gujarat and others, 2004(2) RCR (Criminal) 836: (2004)4 SCC 158*, the Supreme Court reminded the conscientious role to be played by the Criminal Courts in order to ensure that the Courts are alive to the realities, realizing its width of power available under Section 311 of Cr.P.C. read along with Section 165 of the Evidence Act. The relevant part of the said decision can be culled out from paragraphs 43, 44, 46 and 56, which are as *under*:



CRM-M-15180-2024

10

"43. The courts have to take a participatory role in a trial. They are not expected to be tape recorders to record whatever is being stated by the witnesses. Section [311](#) of the Code and Section [165](#) of the Evidence Act confer vast and wide powers on presiding officers of court to elicit all necessary materials by playing an active role in the evidence-collecting process. They have to monitor the proceedings in aid of justice in a manner that something, which is not relevant, is not unnecessarily brought into record. Even if the prosecutor is remiss in some ways, it can control the proceedings effectively so that the ultimate objective i.e. truth is arrived at. This becomes more necessary where the court has reasons to believe that the prosecuting agency or the prosecutor is not acting in the requisite manner. The court cannot afford to be wishfully or pretend to be blissfully ignorant or oblivious to such serious pitfalls or dereliction of duty on the part of the prosecuting agency. The prosecutor who does not act fairly and acts more like a counsel for the defence is a liability to the fair judicial system, and courts could not also play into the hands of such prosecuting agency showing indifference or adopting an attitude of total aloofness.

16. Further, in ***Zahira Habibullah Sheikh (supra)*** and in ***Rajaram Prasad Yadav v. State of Bihar and another, 2013(3) RCR (Criminal) 726***, the Court reiterated the extent of powers under Section 311 of Cr.P.C. and held that:

“The object underlying Section 311 of the Code is that there may not be failure of justice on account of mistake of either



CRM-M-15180-2024

11

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 proceeding 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."

17. The Hon'ble Supreme Court recently in ***Varsha Garg v. The State of Madhya Pradesh 2022 AIR (Supreme Court) 3707*** discussed the ***nature of power*** under Section 311 of Cr.P.C.: -

"This power can be exercised at any stage of any inquiry, trial or other proceeding under the CrPC. The latter part of Section 311 states that the Court "shall" summon and examine or recall and re-examine any such person "if his evidence appears to the Court to be essential to the just decision of the case". Section 311 contains a power upon the



CRM-M-15180-2024

12

Court in broad terms. The statutory provision must be read purposively, to achieve the intent of the statute to aid in the discovery of truth.

29. The first part of the statutory provision which uses the expression "may" postulates that the power can be exercised at any stage of an inquiry, trial or other proceeding. The latter part of the provision mandates the recall of a witness by the Court as it uses the expression "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. Essentiality of the evidence of the person who is to be examined coupled with the need for the just decision of the case constitute the touchstone which must guide the decision of the Court. The first part of the statutory provision is discretionary while the latter part is obligatory."

18. The Hon'ble Apex Court while reiterating the principle enunciated in ***Mohanlal Shamji Soni (supra)*** stressed upon the wide ambit of Section 311 of Cr.P.C. which allows the power to be exercised at any stage and held that:

"The power of the court under Section 165 of the Evidence Act is in a way complementary to its power under Section 311 of the Code. The section consists of two parts i.e.: (i) giving a discretion to the court to examine the witness at any



CRM-M-15180-2024

13

*stage and (ii) the mandatory portion which compels the court to examine a witness if his evidence appears to be essential to the just decision of the court. Though the discretion given to the court is very wide, the very width requires a corresponding caution. In **Mohanlal v. Union of India** this Court has observed, while considering the scope and ambit of Section 311, that the very usage of the words such as, "any court", "at any stage", or "any enquiry or trial or other proceedings", "any person" and "any such person" clearly spells out that the section has expressed in the widest-possible terms and do not limit the discretion of the court in any way. However, as noted above, the very width requires a corresponding caution that the discretionary powers should be invoked as the exigencies of justice require and exercised judicially with circumspection and consistently with the provisions of the Code. The second part of the section does not allow any discretion but obligates and binds the court to take necessary steps if the fresh evidence to be obtained is essential to the just decision of the case, "essential" to an active and alert mind and not to one which is bent to abandon or abdicate. Object of the section is to enable the court to arrive at the truth irrespective of the fact that the prosecution or the defence has failed to produce some evidence which is necessary for a just and proper disposal of the case. The power is exercised and the evidence is examined neither to help the prosecution nor the defence, if the court feels that there is necessity to act in terms of Section 311 but only to subserve the cause of justice and public interest. It is done with an object of getting the evidence in aid of a just decision and to uphold the truth."*

**CRM-M-15180-2024****14**

19. At the risk of repetition, it may be said that Section 311 of Cr.P.C. allows the court to invoke its inherent power at any stage, as long as the ends of justice are being met, without qualifying any limitation or prohibition. Needless to say, that an enquiry or trial in a criminal proceeding comes to an end or reaches its finality when the order or judgment is pronounced and until then the court has power to use this section to uncover the truth.

20. The next important question is whether Section 311 of Cr.P.C. gives the court carte-blanche drawing no underlying principle in the exercise of the extra-ordinary power and whether the said Section is unguided and uncontrolled. Though Section 311 of Cr.P.C. the widest possible terms 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 they should be exercised, that power is circumscribed by the principle that underlines Section 311 of Cr.P.C., namely, evidence to be obtained should appear to the court essential to a just decision of the case by getting at the truth by all lawful means. Therefore, it should be borne in mind that the aid of the section should be invoked only with the object of discovering relevant facts or obtaining proper proof of such facts for a just decision of the case and it must be used judicially and along with circumspection.



CRM-M-15180-2024

15

21. Fazl Ali, J. in ***Rameshwar Dayal V. State of U. P., (1978) 2 SCC 518***, while expressing his views about the careful exercise of its power by the Court has stated (paras 13 and 17):

"It is true that under Section 540 (Section 311) of the Criminal Procedure Code, the High Court has got very wide powers to examine any witness it likes for the just decision of the case, but this power has to be exercised sparingly and only when the ends of justice so demand. The higher the power the more careful should be its exercise.... The words, "Just decision of the case" would become meaningless and without any significance if a decision is to be arrived at without a sense of justice and fair play".

22. ***In Swapan Kumar Chatterjee Central Bureau of Investigation, (2019) 14 SCC 328***, wherein Apex Court held:

"It is well settled that the power conferred under Section 311 should be invoked by the court only to meet the ends of justice. The power is to be exercised only for strong and valid reasons and it should be exercised with great caution and circumspection. The court has vide power under this section to even recall witnesses for re-examination or further examination, necessary in the interest of justice but the to be consideration exercised after taking into the facts and circumstances of each case. The power under this provision shall not be exercised if the court is of the view that the application has been filed as an abuse of the process of law."



CRM-M-15180-2024

16

23. Having noted the above-mentioned decisions which comprehensively define the scope of Section 311 of Cr.P.C., **the juridical issue which needs to be addressed is that how the extraordinary power vested with the Criminal Courts under Section 311 of Cr.P.C.in practical terms must be exercised.**

24. In *Swapan Kumar Chatterjee vs Central Bureau of Investigation, (2019) 14 SCC 328*, the Supreme Court held that despite the wide discretion to the Criminal Courts under Section 311 of Cr.P.C., the said powers were not unbridled as it observed:

“Where the prosecution evidence has been closed long back and the reasons for non-examination of the witness earlier is not satisfactory, the summoning of the witness at belated stage would cause great prejudice to the accused and should not be allowed. Similarly, the court should not encourage the filing of successive applications for recall of a witness under this provision.”

25. On a scrupulous analysis of the judgments of the Apex Court, it becomes comprehensible as to how the discretionary powers vested under Section 311 of Cr.P.C with the criminal courts must not be exercised:-

- i. Capriciously or arbitrarily because any improper exercise of the power may lead to undesirable results;



CRM-M-15180-2024

17

- ii. To fill up the lacuna left by the prosecution or by the defence;
- iii. To the disadvantage of the accused or the cause serious prejudice to the defence of the accused or to give an unfair advantage to the rival side;
- iv. To tender additional evidence as a disguise for a retrial or to change the nature of the case against either of the parties.

26. It is has now become a trite law that enormous powers have been vested with the trial courts while deciding an application under Section 311 of Cr.P.C. and the very basis for allowing or disallowing an application under the said provision is to get a conclusive proof of the relevant facts before it so that it discharges its solemn duty of dispensing justice.

27. The Trial Courts while considering an application under Section 311 of Cr.P.C. have been given amend i.e. they **shall** summon a witness if it appears to be **essential for the just decision of the case** but the basis on which they shall exercise this discretionary power remains elusive.

Therefore, this Court deems it appropriate to issue the certain guidelines which shall act as beacon to guide the trial courts in exercising



CRM-M-15180-2024

18

its discretion while considering an application under Section 311 of Cr.P.C.

28. These guidelines are being issued keeping in view the right of accused to get a fair and speedy trial under Article 21 of the Constitution of India and to ensure that the principles of justice, equity and fair play are upheld.

29. **The guidelines are as follows: -**

- i. An application to examine/recall a witness shall be allowed when it is based upon the discovery of some fact of such a nature as to be a decisive factor, which in fact was, when the witness was examined/cross-examined or the trial was at such a stage, as the case may be, unknown to the Court and also to the party claiming recall/examination, provided that such ignorance was not due to negligence.**

Provided that the Court must expressly record the existence of the new fact, recognizing that it has such a character as to allow the application, and declaring the application admissible on this ground.

Provided that an application on this ground must be made within three months of the discovery of the new fact.



CRM-M-15180-2024

19

- ii. Mere Change of Counsel during the trial shall not be the sole ground to allow an application under Section 311 of Cr.P.C.**
- iii. An application made post facto i.e. after the stage of trial has elapsed shall detail out the purpose for which the witness is sought to be examined/recalled and how the party would be prejudiced if the said witness is not examined/recalled.**
- iv. Plain averments by a party that if a witness is not examined/recalled would cause prejudice shall not be sufficient, it should be conspicuous to the Court that if such a witness is not examined/recalled then it shall materially impact the outcome of the case.**
- v. The Courts shall decide an application under Section 311 of Cr.P.C. as expeditiously as possible preferably within a period of three months**

These guidelines shall purely serve as a facilitator to secure the ends of justice and hence, notwithstanding the aforementioned guidelines, the paramount consideration to decide an application under Section 311 of Cr.P.C. must be to uphold justice,



CRM-M-15180-2024

20

equity and fair play as there shall always be facts and circumstances that no human ingenuity can foresee.

Be that as it may, the trial Court shall record reasons for the departure from these guidelines if the case of the applicant falls within the ambit of these guidelines.

30. These guidelines shall be applicable at all the stages of trial, even at the appellate stage. If the application is moved before the appellate Court, then the Scope of Section 391 Cr.P.C. shall also be taken into consideration.

31. Having considered the legal position qua Section 311 of Cr.P.C., now let us advert to the facts of the present case. The testimony of two prosecution witnesses namely PW-1 ASI Vikram Singh and PW-4 SI Jaswinder Singh was recorded on 22.04.2022 and 25.01.2023 respectively. The petitioner after almost one year filed an application under Section 311 of Cr.P.C. on 07.03.2024 for recalling two witnesses, i.e. PW-1 ASI Vikram Singh and PW-4 SI Jaswinder Singh for further cross-examination stating that the further cross-examination of these two witnesses shall be essential for the just decision of the case.

32. The Grounds taken by the petitioner before the trial court while moving the application under Section 311 of Cr.P.C. to recall the two witnesses are as follows:-

**CRM-M-15180-2024****21**

- i. The previous counsel did not ask some material/relevant questions to the official witnesses and now the petitioner engaged a new counsel who shall cross examine the two witnesses.
- ii. The questions which were allegedly not asked to these witnesses pertain to the aspects of recovery of the Contraband and the compliance of mandatory statutory provisions of the NDPS act.

33. This Court has carefully gone through the application dated 07.03.2024 filed under Section 311 of Cr.P.C, the testimony of the two witnesses sought to be recalled and the order dated 07.03.2024 of ASJ, Karnal dismissing the said application of the petitioner.

34. From the bare perusal of the testimony of the witnesses (it is evident that the counsel for the defence did put all the relevant questions to the witnesses) sought to be re-examined including the questions which the petitioner states were purportedly omitted, the petitioner has made bald averments that the re-calling of these witnesses is essential for the just decision of the case without any relevant material to back the same. The Petitioner neither before the Trial Court nor before this Court stated the specific questions which were omitted by the previous defence counsel which had to essentially put before the witnesses for the just outcome of the case. The application dated 07.03.2024 under Section 311 of Cr.P.C. was apparently an attempt to procrastinate the trial considering



CRM-M-15180-2024

22

that this application would have no bearing on the ultimate outcome of the case as:-

- i. No new fact which was not earlier in the knowledge of the Court or the party claiming recall came to the fore, which can be termed as material; and
- ii. The application was made after the elapse of more than one year; and
- iii. Plain averments were made without any robust proof that the non-recalling of the witnesses would result in grave prejudice to the accused and would consequently result in failure of justice.

37 Finding no infirmity in the order dated 07.03.2024 passed by ASJ, Karnal the present petition is dismissed.

38. Since, guidelines are issued as detailed in para 29 of this judgment, the Registry is directed to send a copy of this order to all the District and Sessions Courts in the states of Punjab, Haryana and the UT of Chandigarh for necessary compliance and sensitizing all the Courts below.

39. While parting it is pertinent to remind the Trial Courts of the observation made by the Hon'ble Supreme Court in the landmark case of ***Zahira Habibulla H. Sheikh (supra)***:-



CRM-M-15180-2024

“It is also important to note the active role which is to be played by a court in a criminal trial. The court must ensure that the Prosecutor is doing his duties to the utmost level of efficiency and fair play. Courts have to ensure that the accused persons are punished and that the might or authority of the State are not used to shield themselves or their men. It should be ensured that they do not wield such powers which under the Constitution has to be held only in trust for the public and society at large. If deficiency in investigation or prosecution is visible or can be perceived by lifting the veil trying to hide the realities or covering the obvious deficiencies, courts have to deal with the same with an iron hand appropriately within the framework of law. It is as much the duty of the prosecutor as of the court to ensure that full and material facts are brought on record so that there might not be miscarriage of justice.”

May 30, 2024

manju

(ALOK JAIN)
JUDGE

Whether speaking/reasoned:-	Yes
Whether Reportable:-	Yes