

THE HON'BLE DR JUSTICE B.SIVA SANKARA RAO

CRIMINAL REVISION CASE NO.289 OF 2017

ORDER:

Heard the counsel for accused Nos.2 to 4-revision petitioners and also the State, represented by Public Prosecutor for revision second respondent, the very first respondent-*de facto* complainant even served failed to attend and perused the material on record.

The impugned order allowing the application under Section 311 of the Code of Criminal Procedure (Cr.P.C.) is besides recalling of P.Ws.1, 3, 5 and 6 also to examine additionally L.Ws.6, 7 and 11, whose evidence is earlier stated closed. The trial of the case is, after completion of examination of accused under Section 313 Cr.P.C., coming for arguments. In the application, the reason assigned for examination of L.Ws.6, 8 and 11 is that earlier on the date fixed that was on 18.01.2016, they could not attend as they were out of station and the Court despite sought for time by prosecution closed their evidence, however, their evidence is essential and now they are available to depose and they are to be permitted to depose. For the other relief of recall of P.Ws.1, 3, 5, and 6, what is mentioned is some essential facts not deposed by these witnesses and thereby for a just decision, their recall is essential.

Originally, recall of P.W.1 is sought and with handwriting, P.Ws.3, 5 and 6 also added in para-3 line No.1 of the petition. However, in the first line of para-3, re-examination of P.W.1 only sought and not P.Ws.3, 5 and 6. However, the lower Court allowed the petition and permitted P.W.1 to attend before the Court on 16.12.2016. The order is silent regarding P.Ws.3, 5 and 6, though

I the petition mentioned also for their recall. The impugned order says for just decision of the case and to render judgment on conclusive evidence from proper proof, the petition to be allowed and allowed.

A reading of the second limb of Section 311 Cr.P.C. mandates in exercise of power of the Court from use of 'shall' where it is necessary for just decision of the case and without which Court it cannot invoke its inherent power conferred by that provision. Even to exercise the discretion made under first part of Section 311 Cr.P.C. from any application it must be for sufficient reason and cause shown. It is no doubt the application filed was by the prosecution, however the application itself is silent so far as recall of P.Ws.1, 3, 5 and 6 concerned as to what are the facts failed to elicit and what are the facts required to be elicited. Thus, in the absence of which, a stray sentence of their examination further is essential by recall would not have been influenced the mind of the trial Court under Section 311 Cr.P.C. to permit for recall, that even to exercise power under Section 165 of the Indian Evidence Act.

So far as examination of L.Ws.6, 8 and 11 concerned, there is a sufficient reason from saying, the prosecution could not secure them on the day fixed for their evidence and the Court did not consider the time sought for and closed their evidence on 18.01.2016 and they were out of station and now available and their evidence is essential. Having regard to the above, this is a fit case to that extent to permit examination of the prosecution witnesses L.Ws.6, 8 and 11.

Accordingly, the revision is allowed in part by setting aside the order of lower Court to the extent of allowing recall of P.Ws.1, 3, 5 and 6; however, by confirming to the extent of examination of L.Ws.6, 8 and 11 by invoking power under Section 482 Cr.P.C. from the revision since not maintainable, by following the expression of the three-Judge Bench of Apex Court in **Prabhu Chawla v. State of Rajasthan**¹. Miscellaneous petitions, if any, pending shall stand closed.

(Dr. B.SIVA SANKARA RAO, J)

22nd March 2017
RRB



¹ 2016 Law Suit (SC) 866