

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL PETITION NO.3971 OF 2018

ORDER:

This criminal petition is filed under Section 482 of Criminal Procedure Code (for short "Cr.P.C.") questioning the order dated 05.03.2018 passed in CrI.M.P.No.999 of 2017 in C.C.No.68 of 2016 on the file of the Special Judicial Magistrate I at Rajendranagar, Ranga Reddy District, whereby the petition filed under Section 311 of Cr.P.C. was dismissed.

The petitioner herein filed CrI.M.P.No.999 of 2017 in C.C.No.68 of 2016 under Section 311 of Cr.P.C. to recall P.W.6 for the purpose of marking copy of complaint dated 15.08.2015 as it was misplaced at the time of cross-examination of P.W.6.

The respondents/accused opposed the petition *inter alia* contending that the petition is filed at belated stage.

The Court below dismissed the petition on the ground that the report dated 15.08.2015 was already marked as Ex.P.1 by P.W.1 in his evidence.

Learned counsel for the petitioner contended that the report dated 15.08.2015 is relevant to decide the real controversy between the parties and marking of Ex.P.1 dated 15.08.2015 through P.W.1 is not sufficient, it must be confronted to investigating officer P.W.6, therefore, for limited purpose of confronting the report dated 15.08.2015 to the investigating officer to establish the report lodged by the petitioner, the witness is to be recalled.

In view of the facts and circumstances of the case, I deem it appropriate to permit the petitioner herein to recall P.W.6 for limited

purpose of confronting the report dated 15.08.2015 to him. But the trial Court on erroneous appreciation of facts, without considering the object of Section 311 of Cr.P.C., committed an error and dismissed the petition.

In “**AG vs. Shiv Kumar Yadav and Others**”¹, the Apex Court culled out following principles to be borne in mind for exercising power under Section 311 Cr.P.C, and they are as follows:

1. 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?
2. The exercise of the widest discretionary power Under Section 311 Code of Criminal Procedure should ensure that the judgment should not be rendered on inchoate, inconclusive and speculative presentation of facts, as thereby the ends of justice would be defeated.
3. 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 re-examine any such person.
4. The exercise of power Under Section 311 Code of Criminal Procedure 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.
5. 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.
6. The wide discretionary power should be exercised judiciously and not arbitrarily.
7. 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.
8. The object of Section 311 Code of Criminal Procedure simultaneously imposes a duty on the court to determine the truth and to render a just decision.
9. 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.

¹ AIR 2015 SC 3501

10. 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.
11. 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.
12. The additional evidence must not be received as a disguise or to change the nature of the case against any of the party.
13. 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.
14. The power Under Section 311 Code of Criminal Procedure 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."

In view of the principles laid down in the judgment referred supra, it is appropriate to bring entire evidence on record to have fair trial. Therefore, the order of the trial Court is liable to be quashed.

In the result, the criminal petition is allowed. The order dated 05.03.2018 passed in CrI.M.P.No.999 of 2017 in C.C.No.68 of 2016 by the Special Judicial Magistrate I, Rajendranagar, Ranga Reddy District is hereby quashed and the petitioner is permitted to recall P.W.6 for limited purpose of confronting the report dated 15.08.2015 and mark the same, if not marked, by fixing a date for cross-examination. In the event of failure to cross-examine P.W.6 on the date of appearance, the order shall stand automatically cancelled

and the trial Court is at liberty to proceed further in accordance with law. No costs.

The miscellaneous petitions pending, if any, shall also stand closed.

JUSTICE M. SATYANARAYANA MURTHY

20.07.2018
Ksp

