

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL PETITION No.5884 of 2018

ORDER:

This criminal petition is filed under Section 482 of Cr.P.C., to quash the order dated 16.04.2018 passed in CrI.M.P.No.5 of 2018 in S.C.No.317 of 2017 by the Assistant Sessions Judge, Atmakur, Kurnool District, summoning the proposed witness Dr. L. Parvathi, Plastic Surgeon, Vijaya Hospital, Kurnool, for production of the case sheet and discharge summary of the injured person/P.W.5 to the Court and to give evidence.

2. The State filed a petition under Section 311 of Cr.P.C., to summon the witness Dr. L. Parvathi on the ground that P.W.4, who issued Ex.P4-wound certificate, did not depose anything about the material aspects and P.W.10-doctor deposed the opinion mentioned in Ex.P4 and that the details as to the surgery and other treatment given to the injured were not mentioned therein and therefore, it is necessary to examine Dr. L. Parvathi to substantiate the prosecution case and prayed to summon the witness. The de-facto complainant/injured or any prosecution witness has not deposed anything against the doctor, who treated the injured witness.

3. The contention of petitioners is that the doctor need not be summoned and examined as witness in the present case as Dr L. Parvathi, a Plastic Surgeon, never treated the injured persons in the hospital and that summoning the said doctor for production of case sheet and other record may cause unnecessary delay in disposal of

the sessions case and therefore, the order passed by the Court below is erroneous and prayed for dismissal of the impugned application by allowing the criminal petition.

4. The Public Prosecutor for the State contended that this petition is not maintainable in view of the judgment of the Apex Court in **Girish Kumar Suneja v. C.B.I**¹ and prayed for dismissal of the criminal petition.

5. Undoubtedly, the petition is filed under Section 311 of Cr.P.C., before the Assistant Sessions Judge, Atmakur, to summon Dr. L. Parvathi, on the ground that she is the prime witness to substantiate the prosecution case as Ex.P-4-wound certificate did not disclose anything about the details of treatment.

6. As seen from the record, it is clear that the petition was filed under Section 311 of Cr.P.C. and the power of this Court under the said Section is unlimited and this Court can exercise power under Section 311 of Cr.P.C., at any stage of enquiry, 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. Therefore, it is clear that the Court is empowered to recall any witness at any stage of proceedings either trial or other proceeding and this power is not confined to any

¹ AIR 2017 SUPREME COURT 3620

particular class of persons. The two conditions are to be satisfied to exercise such power to call a witness only on the motion of either of the prosecution or defence and any person can be summoned and recalled at any stage of the proceedings whether the Court finds that the evidence of a particular witness is necessary. In **A.G v. Shiv Kumar Yadav**², the Apex Court framed certain guidelines, which are extracted hereunder:

- “(i) 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?
- b) The exercise of the widest discretionary power under [Section 311](#) Cr.P.C. should ensure that the judgment should not be rendered on inchoate, inconclusive speculative presentation of facts, as thereby the ends of justice would be defeated.
- c) 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.
- d) The exercise of power under [Section 311](#) Cr.P.C. 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.
- e) 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.
- f) The wide discretionary power should be exercised judiciously and not arbitrarily.
- g) 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.
- h) The object of [Section 311](#) Cr.P.C. simultaneously imposes a duty on the Court to determine the truth and to render a just decision.
- i) 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.
- j) Exigency of the situation, fair play and good sense should be the safe guard, while exercising the discretion. The Court should bear in mind that no party in a trial can be foreclosed from correcting errors

² AIR 2015 (SC) 3501

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.

k) 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.

l) The additional evidence must not be received as a disguise or to change the nature of the case against any of the party.

m) 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.

n) The power under [Section 311](#) Cr.P.C. 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".

Even by applying the principles laid down in the aforesaid judgment, if the Court finds that the evidence of witness is necessary for just decision of the case pending before the Court, it can summon any witness. Therefore, following the principles laid down in the above judgment, I am of the considered view that it is a fit case where the trial Court exercises its power under Section 311 of Cr.P.C., to summon the witness after recording its satisfaction that the evidence of proposed witness Dr. L. Parvathi is necessary.

7. The only contention of the petitioners before this Court is that the said doctor never treated any injured person and if any injured witness is produced before this Court, he would disclose the said fact and the petitioners will have a right to cross-examine the witness with regard to the treatment given by the injured, who was already

examined and as such, no prejudice would be caused to the petitioners even if the proposed witness is summoned. Hence, I find that it is not a fit case to interfere with the order under challenge passed by the Court below. Consequently, the petition fails and is devoid of merit.

8. In the result, the Criminal Petition is dismissed. Miscellaneous petitions, if any, pending in this criminal petition shall stand dismissed.

13th June, 2018

sj

M. SATYANARAYANA MURTHY, J

