

occurrence in which he has spelled out the genesis of the occurrence and this evidence would be essential for the just decision of the case and it satisfy the parameters of Section 311 of Cr.P.C. once the test of essentiality is passed then the Court is required to allow the application under Section 311 of Cr.P.C. and any denial of the opportunity to the accused would amount to violation of Article 21 of the Constitution of India which ensures free and fair trial and moreover, the opinion of the trial Court is totally erroneous as the trial is not at the fag end, it is still at the stage of recording prosecution evidence. The petitioner being an accused has right to put a question to the complainant for proving his innocence and it is a trite law that a person cannot be denied his right to defend himself.

Per contra, the learned State counsel, on instructions from ASI Subhash Chand, submits that out of 10 prosecution witnesses, 06 have already been examined. The pen drive was never handed over to the Investigating Officer during the course of investigation. Further, it can be proved at the stage of defence evidence.

Having heard learned counsel for the parties and after perusing the records, it transpires that the pen drive contains the purported conversation between the complainant and the petitioner and this conversation is essential and material for the just and proper decision of the present case. This piece of evidence would be necessary for deciding the controversy effectively. Reliance in this regard is placed on the judgment of the Hon'ble Supreme Court passed in 'Varsha Garg Vs. The State of Madhya Pradesh and others' Cr. Appeal No. 1021 of 2022 and the judgment of this Court passed in 'Vinod Kumar Vs. State of Haryana and others' CRR No.377 of 2020.

The principles of natural justice are an integral part of right to fair trial under Article 21 of the Constitution of India. Any denial of the best available evidence or effective and substantial hearing to accused in proving defence would amount to denial of free and fair trial.

The power under Section 311 of Cr.P.C is dictated by exigency of the situation based on the principle of fair play and goodwill. The evidence being essential to make the ends of justice meet, which would depend upon the facts and circumstances of each case, is the only guiding factor for exercise of this power. It would be obligatory on the part of the Court to summon the relevant witness in case his evidence appears to be essential for just decision of the case. However, the power under Section 311 of Cr.P.C. is circumscribed by the principle that the evidence to be obtained must be essential for just decision of the case. Reliance in this regard can be placed upon the judgments rendered by the Hon'ble Supreme Court in 'Mohanlal Shamji Soni vs. Union of India and another' AIR 1991 SC 1346, 'V.N. Patil Vs. K. Niranjan Kumar' in 2021(2) R.C.R.(Criminal) 310 and this Court in 'Sukhdev Singh vs. State of Punjab' 1982 Cr. LJ 2201.

In view of the above, the impugned order dated 28.07.2023 (Annexure P-1) is hereby set aside and the learned trial Court is directed to provide one effective opportunity to the defence to put the contents of the pen drive to PW-1.

(HARPREET SINGH BRAR)
JUDGE

14.03.2024

Neha

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No