

**IN THE COURT OF ADDL. SESSIONS JUDGE V, KAIMUR AT
BHABUA
SESSION TRIAL NO. 18 of 2018**

16.01.2020

A petition u/s 311 Cr.P.C. has been moved by the ld. A.P.P. for the State wherein he has stated that the injured victim Jitender Yadav S/o the informant who has not been shown as a witness in the charge-sheet be summoned in the case for deposition. He submits that in the information the informant has alleged that her son Jitender Yadav was assaulted with a 'tangi' (agriculture implement) and as a result he suffered serious injuries and he was referred to chakiya, Uttar Pradesh for treatment. The ld. A.P.P. further submits that the deposition of this witness is essential towards proper adjudication and just decision of the case.

The ld. Counsel for the accused petitioner submits that Jitender Yadav has neither been named as a witness in the charge-sheet nor his injury report has been annexed alongwith his case diary. That even if deposition is essential then witness is who are not named in the charge-sheet should be summoned only after all the named witnesses have been examined. Hence he submits that the present petition is not maintainable and the same should be dismissed.

I have heard the submissions of the respective ld. Counsels and perused the record of the case. From the record it is apparent that though the informant has alleged that her son Jitender Yadav was attacked with a 'tangi' and had suffered physical injuries yet he has not been shown in the charge-sheet as a witness nor his injury report annexed alongwith the case diary.

It is observed that in *Zahira Habibullah Sheikh V/s State of Gujarat & Ors* (2004) 5 SCC 353, the Hon'ble Apex Court had observed that right from the inception of the judicial system it has been accepted that discovery, vindication and establishment of truth are the main purposes underlying the existence of Courts of Justice. The Court further observed that the object underlying Section 311 Cr.P.C. is that there may not be failure of justice on account of mistake of either party in bringing 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. In re: *Raghunandan V/s State of U.P.* (1974) 4 SCC 186 it was observed that a court also has a

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duty to see that essential questions are not so far as reasonably possible left unanswered. The provision of Section 311 Cr.P.C. is intended to serve this purpose.

Coming to the present case I do not agree with the submissions of the ld. Counsel for the accused that u/s 311 Cr.P.C. a witness can be summoned only after all the named witness in the charge-sheet have been examined. From a bare perusal of the provision of Section 311 Cr.P.C. there is no such bar and the words used are 'at any stage of any inquiry, trial or other proceedings under this code'. In the totality of the circumstances of the present case and in light of the above discussion in my view Jitender Yadav who allegedly had suffered injuries in the incident is an important witness towards proper adjudication of the present case. Therefore I am allowing the present petition u/s 311 Cr.P.C. on behalf of the prosecution and the said injured victim Jitender Yadav is hereby directed to be summoned.

Office is directed to issue witness summons to Jitender Yadav S/o Guddu Yadav for the next date of hearing.

(Dictated)

Sd/-

Addl. Sess. Judge -V