

**In the Court of Avinash Kumar  
Judicial Magistrate 1<sup>st</sup> Class, Benipatti  
G.R. Case No. 1971/2013**

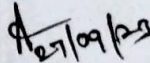
DATE OF ORDER	ORDER with initial of Magistrate	REMARKS
27/09/2023	<p>Today the record is fixed for orders on the petition dated – 30.05.23 filed by the informant under section 311 of Cr.P.C and its rejoinder dated – 28.06.23 filed by the defence.</p> <p>Informant through its petition dated – 30.05.23 has submitted that the petitioner is the informant of the above case. That above noted case is running in defence evidence. That earlier prosecution evidence has been closed and statement of the accused persons under section 313 Cr.P.C has been recorded by your honor. That the informant and his witnesses have no knowledge about the above said progress of the case. That the informant and his witnesses are ready to dispose/give evidence in the case before the Id. Court for which opening of the prosecution evidence is essential. That the petitioner informant wants chance to prove his case himself and other witness for giving evidence in the case before the Id. Court. It is therefore prayed that your honor be pleased to admit this petition and give chance to the informant for giving evidence in the case by opening the prosecution evidence.</p> <p>Defence through its rejoinder dated – 28/06/23 has submitted that the petition dated – 30/05/23 filed by the informant have no merit at all in eye of law and facts. That this petition has been filed only the private capacity nor the state hence it is beyond jurisdiction. That after several opportunities have been awarded to prosecution by your honor lastly A.P.P has been seen the record on 12/04/23 as a result on 02/05/23 prosecution evidence is closed. That section 311 Cr.P.C is the rare and rarest. That ends of justice it is essential to dismiss the petition dated – 30/05/23 filed by the informant. It is therefore prayed that your honor be pleased to accept this rejoinder petition and further be pleased to dismiss the petition dated 30/05/23 filed by the informant and proceed the case ahead.</p> <p>Heard Ld. A.P.O and Ld. counsel on behalf of defence and perused the case record. From the perusal of entire record, it transpires that charge was framed in this case on 17/08/15 but summons to witnesses were issued on 06/07/19 andailable warrants on 17/12/19. However, the prosecution has failed to adduced any evidence in-spite of several directions passed by the court. The Id. Court has closed the prosecution evidence on 02/05/23 after giving last chance to prosecution on 20/03/23. The statement of accused persons was recorded on 15/05/23 and the record was fixed for defence evidence. Then this present petition was filed.</p>	

From the perusal of record, it also appears that after issuance of summon to witnesses on 06/07/19, the prosecution may not be able to adduce its evidence during the period between 19/05/20 to 12/11/20 and 23/04/21 to 12/07/21 due to covid period. Further, none of seven prosecution witnesses as named in charge-sheet have been examined including the informant in this case.

In this regard, it is worth to mention the Hon'ble Apex court decision in the case of "**P. Chhaganlal Daga v. M. Sanjay Shaw**" (2003) 11 SCC 486 wherein, the court has held at Para No. 6 that the only factor which should govern the court in exercise of powers under section 311 should be whether such material is essential for the just decision of the case.

In the instant case, none of the prosecution witnesses have been examined by the prosecution including the informant and the informant is willing to prove its case. Hence, in view of above facts, circumstances and case laws, petition of prosecution dated - 30/05/23 is allowed in the interest of justice with the direction that prosecution shall adduce its evidence on each and every date fixed by the court and conclude the prosecution evidence within next seven dates wherein the gap between two consecutive dates shall not exceed ten days.

Put up for prosecution evidence.

  
J.M. 1<sup>st</sup> Class