

CBI Vs. Shubham Yadav
R.C. No. 16(A)/2017
C.C. No. 105/2019
Old S.C. No. 18/2018

20.02.2020

Present: Sh. Tajvinder Singh, Public Prosecutor for CBI.

Both accused on bail.

Sh. Azad Singh, Advocate, proxy for Sh. Hitender Kapur, Advocate, Counsel for accused.

No prosecution witness is present as request have been received from both the witnesses summoned for today i.e. PW-22 H.V. Attri and Pooja Verma.

Arguments have been advanced on behalf of rival sides on the application under section 311 Cr.P.C. filed on behalf of CBI by Public Prosecutor seeking recalling of PW-2 Sh. O.N. Singh, the then Chief Manager, Bank of Baroda, Azadpur Branch, Delhi which is hereby disposed of.

Reply to the application has been filed by the accused, copy supplied to Public Prosecutor for CBI.

Public Prosecutor for CBI submitted that after examination of PW-2 Sh. O.N. Singh, during the proceedings it came to the notice that some documents, details of which are mentioned in the application itself, could not be inadvertently put to PW-2 Sh. O.N. Singh. It is further submitted that the documents in question are very much essential and material for the just decision of the case. However, there is nothing intentional rather the document skipped the attention and the needful could not be done albeit, PW-2 has been examined at length. As such it is sought that PW-2 Sh. O.N. Singh may be recalled for further examination.

Counsel for the accused has vehemently opposed the same on the ground the application is filed just to fill the lacuna in the case of prosecution after examination of PW-20 Ankit Pandey. The documents in question are not such which are required to be proved for the just decision of the case and in fact the certificates do not mention about any document qua which these certificates were issued.

Having considered the contentions of the rival sides and going through the record, it appears that the document in question is not only on record but the copies of the same are with the accused. Seemingly it escaped the requisite attention during the evidence. There appears no reason to deliberately withhold evidence on the issue. So far as delay is concerned, the arguments have substance. However, human mind and memory has its own limitations and the provisions such as under section 311 Cr.P.C. have been incorporated in the statute books to take care of the situations arising out of the human limitations. A bare reading of Section 311 Cr. P.C. would make it clear that there is no limitation placed qua the stage where this provision can be invoked. The principal guiding factor is finding out the truth to achieve justice or a just decision. This is irrespective of the fact that who invokes it the prosecution or the defence. Reference in this context may be made to the judgments in Jagat Rai Vs. State of Maharashtra AIR 1968 SC 178; Rama Paswan & Ors. Vs. State of Jharkhand [(2007) (11) SCC 191] and Iddar & Ors. Vs. Aabida & Ors. [2007 (11) SCC 211].

When the circumstances of the instant case are tested on the relevant parameters, then it would emerge that the prosecution has been able to carve out a case in favour of the

application. No prejudice is going to be caused to anyone especially the accused, however, the converse of it may be there. If the witness in question is found to be essential for just decision of the case and if the answer is in 'yes', then application U/s 311 Cr.P.C. is required to be allowed, as was observed in *Zahira Habibulla Sheikh & Ors. Vs. State of Gujarat & Ors.* [(2006) 3 SCC 374].

The object underlying Section 311 of the Code is that there may not be failure of justice on account of mistake of either party in bringing the 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. The section is not limited only for the benefit of the accused, and it will not be an improper exercise of the powers of the Court to summon a witness under the Section merely because the evidence supports the case for the prosecution and not that of the accused. The section is a general section which applies to all proceedings, enquires and trials under the Code and empowers Court to issue summons to any witness at any stage of such proceedings, trial or enquiry. In Section 311 the significant expression that occurs is "at any stage of inquiry or trial or other proceeding under this Code". It is, however, to be borne in mind that whereas the section confers a very wide power on the Court on summoning witnesses, the discretion conferred is to be exercised judiciously, as the wide the power the greater is the necessity for application of judicial mind.

Thus considering the fact that Section 311 Cr.P.C. has been liberally interpreted by the courts to secure the ends of justice and in the quest of truth, thus, the application seems to be

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maintainable. Accordingly, the same is allowed subject to the witness being available and on the condition that only one opportunity would be therefore the prosecution to examine him and further subject to a cast of Rs.2,000/-.

List on **23.03.2020** for prosecution evidence.

(Vimal Kumar Yadav)
Special Judge (PC Act), CBI-01
RACC, New Delhi/20.02.2020