

**Order on application filed under section 311 of
Cr.P.C. by the Prosecution.**

The complainant police have submitted a charge sheet against the accused persons alleging the commission of the offences punishable under section 302, 201 r/w section 34 of IPC.

2. This case has been posted for Judgment on 13.02.2020. While looking to the records, it is found that further arguments would require in the case hence, the case has been posted for further arguments on 27.02.2020. Thereafter, the learned Public Prosecutor took time for further arguments on 2-3 occasions and finally, she filed an application u/sec. 311 of Cr.P.C praying to issue summons to C.W.10 to 16 and 28 and 31 on the ground that the prosecution has not given-up the evidence of above said witnesses and in this regard there is no order by this court also. In this case, the C.W.10 to 16 are the witnesses to inquest mahazar and seizure mahazar and their evidence is very much

necessary to prove the said mahazars. Though the inquest mahazar and seizure mahazar have been marked as exhibits with the consent of the counsel for the accused but the said mahazar witnesses have not been given up by the prosecution. Further, C.W.28 is being the driver of the vehicle used by the accused during the commission of the offence and he is the circumstantial witness who has also not been examined due to inadvertence. Further, C.W.31 is being the medical officer who has conducted the Postmortem on the body of the deceased and issued Postmortem report. But the prosecution has marked the said Postmortem report with the consent of the counsel for the accused. Therefore, the previous Public Prosecutor has given-up the evidence of the said C.W.31-Doctor. Thus, the oral evidence of C.W.31-Doctor is very much necessary in order to know the cause of the death of the deceased. Therefore, the learned Public Prosecutor submitted that it is very much necessary to examine the above said witnesses to meet the ends of justice. Hence, it is prayed to allow the application and order

for the summoning of the above said witnesses.

3. On the other hand, Sri. MNL advocate appearing for the accused, has submitted his no objection to allow the application under section 311 of Cr.P.C filed by the prosecution.

4. Heard the learned Public Prosecutor and perused the records.

5. For disposal of this application, the following points arise for my consideration.

1. Whether the prosecution has made out sufficient grounds to allow its application filed under section 311 of Cr.P.C. ?

2. What order ?

6. Having heard the arguments, my finding to above points are;

Point No.1: In the affirmative.

Point No.2: As per the final order;
for following;

REASONS

7. **Point No.1:-** In this case, the prosecution has filed an application U/Sec.311 of Cr.P.C. praying to summoning the C.W.10 to 16, 28 and 31 as they have not been examined in the case on hand. On perusal of records and order sheet, it is found that C.W.10 to 16 and 28 and 31 have not been examined in this case though they are the material witnesses in this case. It appears that the prosecution has not given up the evidence of C.W.10 to 16 who are the inquest mahazar and seizer mahazar witnesses and C.W.28 is the driver of the vehicle used in the commission of offence and C.W.31 is the Doctor who conducted the Postmortem of the body of the deceased person. Therefore, it appears that their evidence is very crucial for establishing the case of the prosecution. Such being the case, the prosecution must be permitted to examine C.W.10 to 16, 28 and 31 to prove their case.

8. Though the Postmortem report issued by C.W.31 has been marked with the consent of the counsel for the accused,

yet the oral evidence of C.W.31-Doctor is very much necessary to meet the ends of justice. So also C.W.16 to 20 who are the inquest mahazar and seizer mahazar witnesses, their evidence is also very much necessary to prove the said mahazars. Thus, the evidence of above said witnesses is very crucial for establishing the case of the prosecution. Therefore, there are no reasons to reject the prayer of the prosecution.

9. It is well settled that the scope and object of S.311 of Cr.P.C is to enable the court to determine the truth and to render a just decision after discovering all relevant facts and obtaining proper proof of such facts, to arrive at a just decision in the case. In other words, said power must be exercised judiciously and not capriciously or arbitrarily which ultimately lead to undesirable results. An application under section 311 of Cr.P.C also cannot be allowed to fill up the gaps and lacuna in the case of the prosecution, or of the defence, or to the disadvantage of the accused, or to cause serious prejudice to the defence of the accused, or to give an unfair advantage to the opposite party.

10. Further, the learned Public Prosecutor has drawn the attention of this court on a reported judgment of Hon'ble Apex court passed in the case of ***Manju Devi Vs. State of Rajasthan and Another*** [Criminal Appeal No.688 of 2019(arising out of SLP(Crl.) No.8315 of 2018)], wherein the Hon'ble Apex court by referring the paras no.8 and 15 of the case in ***Natasha Singh Vs. CBI (state) reported in (2013) 5 SCC 741***, has vividly discussed the importance of Section 311 of Cr.P.C.

11. Thus, in this back ground, in this case, it is necessary to allow the application of the prosecution to render the justice to the both the parties as the material witnesses like C.W.31, 28 and C.W.10 to 16 are left out in the trial of this case. Hence, if this application is allowed, no hardship or injury would be caused to the accused persons. The accused shall have ample opportunity to cross examine the said witnesses and establish the truth. On the other hand, if the application is rejected, the prosecution would be deprived of the opportunity to establish their case. Therefore, there are sufficient and reasonable

grounds to permit the prosecution to take summons for C.W.10 to 16, 28 and 31. Accordingly, I answered the point No.1 in the *Affirmative*.

12. **Point No.2**:- In the light of above discussions, I proceed to pass the following;

ORDER

The application under section 311 of Cr.P.C. filed by the prosecution is hereby allowed.

The prosecution is permitted to take summons to C.W.10 to 16, 28 and 31 as prayed for.

Sd/-

[Manjunath Sangreshi]
II Addl. District & Sessions Judge
Chikkamagaluru.