

ORDER ON APPLICATION FILED BY PROSECUTION UNDER SECTION 311 R/W. 231(1) of Cr.P.C.

It is seen from the record that when the matter was set down for recording the evidence of prosecution witnesses, the learned Public Prosecutor has filed this application seeking permission to produce three photographs of injured CW.2, compact disc said to contain aforesaid photographs, certificate under section 65-B(4) of Indian Evidence Act, CT scan brain film, four X-ray films, true copy of discharge summary and follow up treatment documents of CW.2.

2. In the application, it is stated by the prosecution that the complainant i.e., CW.1 examined as PW.1 and upon getting information from CW.2, who is another injured witness, it is noticed that while submitting charge sheet the investigating officer had not collected the injury photographs, compact disc, certificate under section 65-B(4) of Indian Evidence Act, CT scan brain film, four X-ray films, true copy of discharge summary and follow up treatment documents of CW.2 and therefore the prosecution has filed this application seeking permission to produce the documents annexed to this application. It is stated that said documents are material to establish the gravity of the offences alleged against the accused and to prove the case of the prosecution beyond reasonable doubt. It is also stated that if the application is not allowed, the prosecution would be put to irreparable loss

and therefore, the learned Public Prosecutor sought for allowing the application to meet the ends of justice.

3. The learned counsel for the accused has resisted said application by filing statement of objections by contending that the production of documents by the prosecution is not maintainable either in law or on facts. In this case PW.1 has already been examined and the prosecution has produced the said documents at a belated stage. If this court permits the prosecution to production of additional documents it would prejudice the accused by depriving them of a fair opportunity to prepare their defence. The investigating officer is only permitted to file additional documents, but the prosecution is not permitted to produce the same at a later stage and after the charge sheet. The document No.9 i.e., xerox copy of discharge summary cannot be looked into since it is a xerox copy. Inter-alia, on these grounds the accused sought for rejecting the application.

5. In this case, the accused is facing trial for the offences punishable under sections 323, 324, 504, 506, 307, 447, 354 and 326 of IPC. During the trial, when the matter was set down for evidence of prosecution witnesses, the prosecution has come up with this application seeking permission to produce the photographs of injured CW.2, compact disc, certificate under section 65-B(4) of Indian Evidence Act, CT scan brain film, four X-ray films,

true copy of discharge summary and follow up treatment documents of CW.2.

6. Admittedly, the documents sought to be produced by the prosecution are not the part of charge-sheet. Hence the question that arise for consideration is whether the documents which are not the part of charge-sheet could be received in evidence for prosecution after the commencement of trial. In order to find out an answer to the said question, this court has to fall back on the provision envisaged in section 231(1) of Cr.P.C., which comes under Chapter XVIII, which deals with trial before a court of Session. As per the said provision, on the date fixed for the evidence of prosecution, the Judge shall proceed to take all such evidence as may be produced in support of the prosecution. Since said provision has direct bearing on the relief sought by the prosecution, it would be apposite to extract said section as it would through light on the question involved in this application. Section 231 of Cr.P.C reads as follows:-

“ 231. Evidence for prosecution.

(1) On the date so fixed, the Judge shall proceed to take all such evidence as may be produced in support of the prosecution.

(2) The Judge may, in his discretion, permit the cross- examination of any witness to be deferred until any other witness or witnesses have been

examined or recall any witness for further cross-examination.”

7. From the perusal of aforesaid provision, this court is of the humble view that the expression “all such evidence” employed therein is wide enough to receive any document as evidence for the prosecution in the course of a trial, notwithstanding the fact that in the charge-sheet, the investigating agency did not rely upon such document. The identical issue as to whether the documents, which are not the part of charge-sheet could be received in evidence for the prosecution after the commencement of trial, cropped up in the case of B.L. Uday Kumar V/S. State of Karnataka reported in 2018 CrL LJ 3925, wherein our Hon'ble High Court has held in paragraph 13 and 14 as follows:

13. Thus it is clear that sub-section (3) of section 242 casts a mandatory duty on the Magistrate to take all such evidence as may be produced in support of the prosecution. The word "produced" in sub-section (3) also cannot be given a restrictive meaning to hold that only the materials collected during investigation could be permitted to be produced in evidence. Such a construction would defeat the very purpose of trial. If the main object of criminal trial is to discover truth, necessarily all and every piece of evidence while could help the court to arrive at a just decision should be allowed to come on

record. Therefore, it is immaterial whether the "evidence" sought to be produced during trial was either collected in the course of investigation or subsequent thereto. Section 91 Cr.P.C no doubt empowers the court or the officer in charge of the Police Station to ensure the production of any 'document or other thing' 'necessary or desirable' for the purpose of any investigation, enquiry or other proceedings by issuing summons or written order to the person in whose possession or power such document or thing is; but section 242(3) Cr.P.C requires the court to take all such evidence which the prosecution desires to produce including the documents which are not mentioned in sub-section (5) of section 173 Cr.P.C. subject of course furnishing to the accused a copy thereof and providing him a reasonable opportunity to meet the same. The only safeguard or restriction that could be thought of in view of the provisions of the Evidence Act is that such evidence must relate to the matters of fact in enquiry. In other words, as long as the proposed evidence, either oral or documentary, is relevant and in support of the prosecution case, the Magistrate cannot refuse to receive it.

14. In this context, it is also relevant to note that a duty is cast on the Public Prosecutor conducting the trial to produce all evidence relevant to the determination

of the guilt or innocence of the accused. Therefore, it goes without saying that even the Public Prosecutor conducting the trial owes a duty to produce before the court all evidence in support of the prosecution. The Public Prosecutor therefore cannot withhold any relevant piece of evidence which he finds it necessary for fair trial of the case. That being the position of law and the mandate contained in section 242(3) of Cr.P.C., I do not have any hesitation to hold that the criminal court conducting the trial is bound to receive all the evidence produced by the prosecution irrespective of the fact whether the said evidence or documents were part of the charge-sheet placed before the court or not.

8. The language of section 231(1) of Cr.P.C is in pari materia with the provision envisaged in section 242 (3) of Cr.P.C and therefore the aforesaid observation made by our Hon'ble High Court in the said case are equally applicable to a court of session while dealing with an application under section 231(1) of Cr.P.C.

9. Thus, it is clear sub-section 1 of section 231 of Cr.P.C casts a mandatory duty on the court to take all such evidence as may be produced in support of the prosecution. The words “all such evidence” and “produced” used in said sections cannot be given a restrictive meaning to hold that only the materials collected during investigation could be permitted to be produced in evidence. If such a construction

is given, it would defeat the very purpose of trial. The main object of criminal trial is to discover the truth and as such all and every piece of evidence which could help the court to arrive at a just decision should necessarily be allowed to come on record. Therefore, it is immaterial whether the evidence sought to be produced during the trial was collected in the course of investigation or subsequent thereto. Moreover, as stated above, the provision envisaged in section 231(1) of Cr.P.C requires the court to take all such evidence which the prosecution desires to produce including the documents which are not mentioned in section 173(5) of Cr.P.C subject to furnishing the copies of such documents to the accused and providing him a reasonable opportunity to meet the same. The only safeguard or restriction that could be thought of in view of the provision of the evidence act is that the evidence sought to be produced must relate to the matters of fact in dispute. In other words, as long as the proposed evidence, either oral or documentary, is relevant and in support of the prosecution case, the court cannot refuse to receive it. Further the provision contemplated under section 311 of Cr.P.C mandates that if the court is of the opinion that the evidence is required for the just decision of the case then it shall allow the same to come on record.

10. As stated above, in the case on hand, the prosecution has sought for production of the three photographs of injured CW.2, compact disc said to

contain aforesaid photographs, certificate under section 65-B(4) of Indian Evidence Act, CT scan brain film, four X-ray films, true copy of discharge summary and follow up treatment documents of CW.2 on the premise that the said documents are necessary to establish the severity of the injuries sustained by CW-2 and the gravity of the offences alleged against the accused. Hence it cannot be said that the said proposed evidence is not relevant for the prosecution as it would throw some light on the fact in issue. The veracity of said documents cannot be looked into at this stage. Accordingly, I proceed to pass the following:-

ORDER

The application filed by the prosecution under Section 311 of Cr.P.C r/w. Section 231(1) of Cr.P.C is hereby allowed and the documents produced along with said application are taken on record.

Sd/-

(BHANUMATHI. B.C.,)

***II Addl. District & Sessions Judge
Chikkamagaluru***