

Order on A/U/S. 311 r/w Sec. 91 of Cr.P.C filed by the accused side

The complainant police have filed the charge sheet against the accused persons alleging the commission of the offences punishable under sections 143, 147, 324, 307, 506 r/w 149 of IPC.

2. When this case has been posted for arguments of defense side, the counsel for the accused persons has filed this application praying to recall the P.W.17-Dr. Mohammed Saleha for his further cross examination on the ground that the injured P.W.3 to 7 reported to P.W.17 on 08.03.2013 and at the time of examination at M.G. Hospital that they allegedly sustained the injuries “at around 6.00 p.m on 08.03.2013 near Sahara Shadi Mahal, Chikkamagaluru”. It seems that the prosecution has intentionally avoided from eliciting the time and place of injuries allegedly sustained by P.W.3 to 7 from the medical officer P.W.17, since the same runs counter to the prosecution case. It is noted that P.W.17 has given evasive answer to the suggestion by the defence regarding the time and place of sustaining the injuries by P.W.3 to 7. Further, the P.W.17 has denied the suggestion that the injured have reported to him that they have sustained the injuries at 6.00 p.m near sahara shadi mahal on 08.03.2013. Thereby much prejudice has been caused to the accused. The time and place of suffering the injuries by P.W.3 to 7 has been clearly mentioned by P.W.17 in the MLC/Accident register maintained at M.G. Hospital, Chikkamagaluru. The MLC register extract obtained from the office of M.G. Hospital discloses the said fact but P.W.17 has denied the same before the court. That earlier the accused have no occasion to go through the MLC register to get marked the same. Hence, now it is just and necessary to recall P.W.17 for limited purpose to get marked the relevant entry in the MLC register and its true copies by

summoning the original MLC/Accident register maintained at M.G. Hospital, Chikkamagaluru. The recall of P.W.17 for the limited purpose as stated above and to produce the MLC register dated. 08.03.2013 regarding the entries made therein with respect to the patients i.e., P.W.3, P.W.4, P.W.5, P.W.6 & one Akram. The recall of P.W.17 and production of the MLC register is very much essential for the just decision of the case and to bring the truth before the court. In case the application is not allowed, the accused will be subjected to untold hardship and inconvenience and on the other hand, no prejudice will be caused to the prosecution, if the application is allowed. Accordingly, the accused has prayed to allow this application.

3. The learned Public Prosecutor has filed her objections stating that P.W.17 has been already extensively cross examined by the defense side. That the grounds mentioned in the application are not valid grounds. That the court has already given sufficient opportunity to the defense side, still the accused side have this application only to drag the proceedings. Therefore, there are no reasons to recall the said witness and accordingly, she has sought for rejection of the application.

4. For disposal of this application, the following points arise for consideration:

1. Whether the accused persons have made out sufficient grounds to allow application filed under sec. 311 r/w 91 of Cr.P.C ?

2. What order ?

5. Having heard the arguments on both sides, my findings to the above points are as under.

Point No.1: In the Affirmative

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

REASONS

6. **Point No.1**: It is true that PW.17-Dr. Mohammed Saleha has been extensively cross examined by the defence side. But there is no scale to measure the sufficiency of the cross examination. It is settled principle of law that justice must not only be done but it also must seem to be done. When the accused have put forth plea that the P.W.17 has denied the suggestion that the injured have reported to him that they have sustained the injuries at 6.00 p.m. near Sahara Shadi Mahal on 08.03.2013. But the time and place of suffering the injuries by P.W.3 to 7 has been clearly mentioned by P.W.17 in the MLC/Accident register maintained at M.G. Hospital, Chikkamagaluru. That the entries made MLC/Accident register with respect to the patients P.W.3, P.W.4, P.W.5, P.W.6 & one Akram. The recall of P.W.17 and production of the MLC register is very much essential for the just decision of the case and to bring the truth before the court. Hence, there are no reasons to reject the prayer of the accused.

7. The grievance of the prosecution can be pacified by restricting the scope of cross examination when the witness is recalled. As the accused side themselves have submitted that recall of P.W.17 is for the limited purpose and to produce the MLC register dated. 08.03.2013 regarding the entries made therein with respect to the patients i.e., P.W.3, P.W.4, P.W.5, P.W.6 & one Akram. Therefore, once the scope of cross examination is restricted, then there is no possibility of any prejudice being caused to the prosecution side by recalling the PW.17.

8. 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.

9. Further, 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.

10. If this application is allowed no hardship would be caused to the prosecution as their interest can be protected as discussed earlier. On the other hand, if this application is denied there is a possibility of the accused being denied an opportunity to defend themselves. Therefore, there are sufficient reasons to recall PW.17. Accordingly, point No.1 is answered in the ***Affirmative***.

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

ORDER

The application under section 311 r/w S.91 of Cr.P.C filed by the accused is allowed.

PW.17-Dr. Mohammed Saleha is recalled solely for the purpose stated in the application.

Office is directed to issue summons to PW.17 directing him to bring the MLC register dated. 08.03.2013 for the purpose of evidence on 18.02.2021.

Call on for further cross of PW.17 by 18.02.2021.

Sd/-

**[Manjunath Sangreshi]
II Addl. District and Sessions Judge,
Chikkamagaluru.**