

Order Below Exh. 217

Prosecution has filed an application for examination of I.O as per section 311 of the Code of Criminal Procedure, 1973 (herein after referred as Cr.PC for brevity).

2. It is submitted by Ld.APP that, matter is fixed for final argument. In present matter, investigation officer is not examined despite being material witness. Earlier application filed by informant vide Exh.185 under section 311 for calling of I.O is rejected by the Court on 18/01/2020. However, on the order below Exh.185, revision application no.28/2023 is pending before Hon'ble Sessions Court. Hearing date of the same is 06/11/2025. Hon'ble Sessions Court has stayed the proceedings of this case for three months by giving an opportunity to prosecution to summon and examine the I.O. But, due to unavoidable circumstances, I.O could not present before the Court. It is further submitted that, examination of I.O is essential for the just decision of the case. Unless the I.O is examined, the chain of investigation and authenticity of evidence brought on record could not be fully appreciated by the Court. Section 311 of the Cr.p.C empowers this Court to summon any person as witness at any stage if his evidence appears to be essential for the just decision of the case. It is well settled principle that, even if previous application under section 311 of Cr.PC has been rejected the Court may entertain a subsequent one. On that point, he relied on citation of Rajendra Prasad Vs. Narcotic (1999 6 SCC 110). It is further submitted that, present application is filed without intention to delay the

proceedings. Hence, prayed to allow the application and summon to the I.O.

3. Ld. Advocate on behalf of accused has filed say back leaf of the application and resisted the ground that, informant has previously filed same kind of applications vide Exh.149 and 167 which are came to be rejected by the Court. Thereafter, informant has filed same kind of application vide Exh.185 which is rejected by the Court by passing detailed order on which revision is pending in Session Court. Hence, this application is not tenable. Present matter is pending for evidence since 2014. Nonailable warrants were issued against informant several times. Prosecution has given sufficient opportunities. Citation given by prosecution is not applicable here. Hence, prayed to reject the application.

4. Perused the application, say and record of the file. Heard Ld.APP and Ld. Advocate on behalf of accused. It appears that, charge is framed against accused persons on 27/01/2024. Thereafter, evidence of informant is recorded on 25/03/2014 to 16/04/2016 by interval. Thereafter, second witness on behalf of prosecution is examined on 11/09/2018. Thereafter, on failure of prosecution to secure the presence of witness, prosecution evidence is closed. Statement of accused as per section 313(1) (b) is recorded on 19/12/2019. Since then the matter is posted for final argument. The same kind of application is filed by informant vide Exh.185 which came to rejected on 18/01/2020.

Informant has filed revision application in the same which is pending before Hon'ble Court of Session, Kaij.

5. As per Section 311 of Cr.PC., the first part gives discretion to the Court and so far as second part of section 311 of Cr.PC. is concerned, it is incumbent upon the court to take recourse to the provision of Sec.311 of Cr.PC. However, in both the contingencies, the powers conferred under sec.311 of Cr.PC. should be invoked by the Court only for the ends of justice and to find out the truth and render just decision.

6. In the case of Vakil Prasad [2009 (3) SCC 355], Hon'ble Apex Court observed " The right of speedy trial in all criminal proceedings is an inalienable right under Article 21 of the Constitution....". In another case i.e. Abdul Rehman Antulay & Ors vs. R.S.Nayak & Anr - 10 December, 1991, the Hon'ble Apex Court laid down that, " in cases where the trial is for an offence punishable with imprisonment for a period not exceeding seven years, whether the accused is in jail or not, the Court shall close the prosecution evidence, on completion of a period of two years from the date of recording the plea of the accused on the charges framed whether the prosecution has examined all the witnesses or not, within the said period and the Court can proceed to the next step provided by law for the trial of the case..."

7. In present matter, witness summons was issued to investigating officer several times. But, I.O has not present despite service of summons. Such type of application is filed at 167 and 185 under section 311 of the Cr.P.C. which were rejected by my Ld. Predecessor by passing detailed order. The revision is filed by prosecution against said order. Accordingly, this application is not tenable at all. Hence, order.

ORDER

1. The application Exh.217 is rejected.

Date : 21.11.2025

(P V. Chavan)

J.M.F.C; Kaij.

CERTIFICATE

I affirm that the contents of this PDF file are word to word as per original judgment/ order.

Dictated on : 25.11.2025

Transcribed on : 25.11.2025

Checked & signed on : 25.11.2025

Sd/-

(P. P. Raut),

Stenographer Grade-3,

Ct. of CJJD and JMFC, Kaij.