



CNR: MHLA01-003438-2019.
Sessions Case No.88/2019.
State -Vs.- Jogindar & ors.

ORDER BELOW EXH.143.

1. Present application has been moved on behalf of prosecution, wherein it is prayed that further examination-in-chief of PW-7 be allowed to be conducted. The reason mentioned in the application is that the child witness Bhagatsing has been examined as PW-7 and his cross-examination has not been started. The witness identified the accused by relation with him, however the names of accused have been mentioned in the charge-sheet. Therefore, further examination-in-chief in respect of names of accused is necessary to be allowed to be conducted.

2. Say on behalf of accused No.1, 3 and 5 to 8 has been filed to the application and it is mentioned that the examination-in-chief of the witness has already been completed and now, in order to fill up the lacuna, present application has been filed. Thus, application deserves to be rejected. The same say has been adopted on behalf of accused No.2.

3. Learned A.P.P. argued that present application is maintainable under Section 311 of Code of Criminal Procedure,

as it prescribes two parts; in first part, the discretion is vested in respect of examination of witness and in another part, re-calling of the witness and re-examination of witness has been provided. The prosecution is not trying to fill up the lacuna in the evidence of witness, on the contrary, prosecution is trying to assist the court to the just decision.

4. Advocate for accused No.1, 3 and 5 to 8 argued that another child witness has already been examined by prosecution as PW-5, who has deposed exactly the same as PW-7 deposed. The names of accused have been narrated by other witnesses also. Therefore, there is no need to allow the prosecution to conduct further examination-in-chief of witness.

5. First part of Section 311 of Cr.P.C. specify that court may at any stage of trial examine any person as a witness. Thus, the discretionary power under Section 311 Cr.P.C. essentially intended to ensure that every necessary and appropriate measure is taken by the court to keep the record straight and to clear the ambiguity in so far as the evidence is concerned. At the same time, it is also to be ensured that no prejudice is caused to any one.

6. In present matter, the examination-in-chief of PW-7, whose further examination-in-chief, the prosecution is intending to conduct, has been completed, with the said specific endorsement and order. As the adjournment application at Exh.142 came to be moved on behalf of accused, the cross-examination of witness was deferred. It is the contention of prosecution that PW-7 has narrated the relation of accused with victim, however the names of accused are remained to be narrated by PW-7. It means that the identification of accused has been duly brought on record by PW-7. Therefore, there is no necessity to allow prosecution to bring the names of accused from the mouth of PW-7. Thus, the application deserves to be rejected. Hence, following order :-

ORDER

Application Exh.143 is rejected.

Date : 16.05.2024.

**(Smt. R.M. Kadam)
Additional Sessions Judge - 4,
Latur.**
