


MHLA160010602022 	<u>Regular Criminal Case No.116/2022</u> <u>State Vs Dayanand & Ors.</u>
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ORDER BELOW EXH.90

This application for issuing witness summon to injured-cum-eye witness namely Sukumar Govind Kamble.

2. Learned APP Shri. S.M. Hashmi argued in that support and submitted that said witness is material for just decision of the case. There is necessity to examine that witness.

3. Learned defence advocate is absent and failed to file say. Similarly, the accused failed to file say inspite ample opportunity. The case is four years old. It cannot be adjourned without sufficient cause. Hence, the application proceeded without say of the defence.

4. I have carefully gone through the record and given thoughtful consideration to argument. The prosecution has examined witnesses. The prosecution evidence yet not closed. The prosecution case disclosed presence of said witnesses on the spot and fact of his injured condition. Therefore, he is a material witness. But, the investigation officer has not mentioned his name in the list of witness. It is supplementary list. There is need to go through entire case. Thus, necessity of examination of that witness is appeared. As per section 348 of the Bharatiya Nagarik Suraksha Sanhita and corresponding section 311 of the Cr.P.C. the stage of case is immaterial. The Court can examine material witness at any stage of the case, if it is just and proper for decision of case. The court should

not become spectator or person to balance or determine wrong and right of the parties. The Court is also duty bound to grant an opportunity to examine material witness. His evidence is material for the purpose of just decision of this case and find out truth, which is duty of this court.

5. The Hon'ble Apex Court in case of **Rajendra Prasad Vs The Narcotic Cell through its Officer in charge Delhi, 1999 (6) SCC 110**, held that,

“It is common experience in the criminal courts that, defence counsel would raise objections whenever court exercise power under section 311 of the Cr.P.C. or under section 165 of the Evidence Act by saying's that the court could not fill the lacuna in the prosecution case. Lacuna in prosecution is not to be equated with the fallout of an oversight committed by a public prosecutor during trial, either in producing relevant material or in eliciting relevant answer from witnesses. The adage 'to err is human' is the recognition of possibility of making mistake to which humans are prone. A corollary of any such latches or mistakes during conducting the case cannot be understood as per lacuna which a court cannot fill up lacuna in the prosecution, must be understood as inherent weakness or latent wedge in the matrix of the prosecution case. The advantage of it should normally go to the accused in the trial of the case, but an oversight in the management of the case cannot be treated as irreparable lacuna. No party in a trial can be foreclosed

from correcting, errors. If proper evidence was not adduced or relevant material has not brought on record due to any inadvertence, the court should be magnanimous in permitting such a mistake to be rectified. After all, function of the criminal court is administration of criminal justice and not to count errors committed by the parties or to find out and declare who among the parties perform better.”

6. Accordingly, function of criminal court is administration of criminal justice and not to count errors committed by the parties or to find out and declare who amongst the parties performed better. Hence, proposed witness being direct and material, his evidence is essential to just decision of the prosecution case. In that event, the defence has ever chance to cross-examine that witness. It will not prejudice to the defence. In the result, I pass following order.

:: ORDER ::

1. The application is allowed as prayed in the interest of justice.
2. Issue witness summons to Sukumar Govind Kamble for examination in the interest of justice.
3. Both parties shall expedite the case.
4. Order dictated on computer and pronounced in open court.

Date – 20/04/2026.
Deoni.

(S. A. Surjuse)
Judicial Magistrate First Class
Deoni.