

C.N.R.No. MHPU18-002175-2015
Exh. 78

R.C.C.No-328/2015
State -Vs. Santosh Divekar and Ors.



ORDER BELOW EXH. 78

This is an application under section 311 of Cr.P.C. for recalling investigating officer for further cross-examination.

2. Accused has filed present application and submitted that prosecution has examined total 12 witness. After examination of investigation officer examined prosecution P.W. No. 12, Photographer Kedar Bhagwat. Before his cross-examination he died. P.W. No. 12 filed some document on record in respect of that document and other investigation relevant purpose. It is required to further cross-examination of the I.O. Hence, prayed for recalling I.O. as per section 311 of Cr.P.C.

3. Ld. A.P.P has opposed the application and submitted that the evidence of P.W. No. 9 I.O. was completed on 25/04/2017. After completion of his cross-examination. Prosecution has examination P.W. No. 12 Kedar Bagwat (Photographer). Accused moved an application for adjournment to cross examination of the said witness at Exh. 62. The said application was rejected by the Court and given direction to cross-examine the witness. P.W. No. 12 & 9 are independent witness. Sufficient opportunity was given to the accused to cross-examine P.W. No. 12. So also chief and cross-examination of I.O. is completed. The present application is filed for prolonging the matter. Hence, prayed for rejection of the application.

4. Perused the record. Heard both the side. As per section 311 of Cr.P.C. it is in respect of power to summons. Material witness or examine person present. As per this section any court may at any stage of inquiry, trial or other proceeding under this court, summons any person as witness, or examine any person in attendance, though not summoned as a witness, or recall and re-examined any person as already examined, and the court shall summons and examined or recall and re-examined any such persons if his evidence appears to it to be essential to the just decision of the case.

5. In the case in hand, The offence u/s. 326, 325,323,504,506 r/w 34 of I.P.C. are levelled against the accused. Record shows that P.W. No. 12 who is photographer and was an independent witness. Prosecution moved an application at Exh. 57 for examining the photographer the said application was allowed by the Court. Thereafter accused filed revision under section 397 of Cr.P.C. against the said order. Revision application of accused was dismissed. Also record shows that as per Exh. 62 accused was directed to cross-examine P.W. No. 12 by rejecting the adjournment application of the accused. In spite of direction accused failed to take cross-examination of P.W. No. 12. Thereafter on 15/06/2019 accused again moved an application for recalling P.W. No. 12 for cross-examination. The said application was allowed on 27/08/2019. In spite of that accused failed to cross-examine the said witness. So also record shows that on 23/10/2019 accused again moved an

application for adjournment to cross-examine Pw. No. 12. Now, accused by filing present application prayed for recalling I.O. on the ground that P.W. No. 12 is died and he filed certain documents on record and for other investigation purpose. Record shows that evidence of P.W. No. 9 I.O. was recorded thoroughly on 25/04/2017. Accused also cross-examined him. Further it is the contention of accused that the documents filed by P.W. No. 12 and other investigation purpose it is necessary to recall I.O. As already discussed above Court may recall and re-examined any person as already examined, and the court shall summons and examined or recall and re-examined any such persons if his evidence appears to it to be essential to the just decision of the case.

6. In the case in hand, it is not the case of accused that due to inadvertance certain question could not be aksed to the witness in cross-examination nor it is made clear as to what type of evidence was going to be elecidated from the prosecution witness sought to be recall. So also accused had not stated how the recalling of the witness is essential for reaching the just decisions of the case. No proper reason has been assigned for recalling the witness. Merely submission that for the documents filed by P.W. No. 12 and other investigation purpose, it is necessary to recall the witness for that purpose it is not expected to recall. The witness for further cross-examination. Record shows that the matter is more than 5 years old. The chief and cross-examination of P.W. No. 9 was thoroughly completed in 25/04/2017. The reason mentioned by the accused is

not found to be sufficient and reasonable to recall the witness.
Hence, I pass following order.

Order

Application is rejected.

Date- 27.03.2023

(S.D. Mukkanwar)
Judicial Magistrate First Class,
(Court No.3) Daund, Dist.- Pune

CERTIFICATE

I affirm that the contents of this P. D. F. file order are same, word to word, as per the original order.

Name of the Stenographer : D. R. Kore, Stenographer
(Grade -III)

Name of Court : Smt. S.D. Mukkanwar,
2ndJt. C.J.J.D , Daund
Tq. Daund, Dist. Pune

Date of order : 27/03/2023.

order signed by the P.O.

on : 28/03/2023.

order uploaded on : 28/03/2023.