

Order below Exh. 37

This is application u/s. 311 of the Code of Criminal Procedure, 1973 (hereinafter referred to as 'the Cr.P.C.').

2. The prosecution has claimed that on 17.03.2019, the son of the informant namely Ajij Irfan Thakur was assaulted by accused on account of their previous dispute. He is the victim of the crime. However, the I.O. has failed to record his statement u/s. 161 of the Cr.P.C. His evidence is necessary for the just decision of the case. Hence, this application.

3. Application came to be opposed on the ground that the proposed witness is not cited in the witness list. The statement of the victim was never recorded during the course of investigation as he was never injured. The said fact was known to the I.O. therefore, his statement was not recorded. The provisions of section 311 of the Cr.P.C. are never made to fill up lacunae. The prosecution has not justifiable reason for not recording statement of the witness. Non recording of the statement of the injured cannot be said to be mistake or oversight on the part of the prosecution, the provision cannot be used to fill up major lacunae.

4. I have heard both sides. Both parties have argued in consonance with application and say respectively. I have perused the record. It is the case of prosecution that accused have assaulted Ajij Irfan Thakur. He is the victim in the case. There is injury on his head. The

defence has claimed that the prosecution is trying to fill lacunae. I have perused entire record. The F.I.R., statements of the informant and her husband and other papers submitted with report u/s. 173 of the Cr.P.C. It is prima facie seen that the proposed witness was assaulted by accused. The defence has claimed that injury certificate does not disclose that the proposed witness was injured. Therefore, he cannot be examined. However, the record shows that the proposed witness is the victim in the crime. Facts of prosecution case shows that firstly he was assaulted.

5. It is settled that Court may at any stage of any inquiry, trial or other proceeding under the Cr.P.C. recall re-examine any person already examined if his evidence appears to be essential to be just decision of the case. It is seen that evidence of the proposed witness Ajij Irfan Thakur is necessary for the just decision of the case. Hence, the application deserves to be allowed. Consequently, I pass following order.

ORDER

1. Application is allowed.
2. Issue summons to the proposed witness Ajij Irfan Thakur.

Uran,
Date : 04.07.2023

(Vikas D. Bade)
Judicial Magistrate, F.C., Uran