

ORDER BELOW EXH.28

1. This is an application filed by learned APP under section of 311 of Cr. P. C. It is submitted that, the evidence of prosecution was closed by the Court. The evidence of Investigation Officer and other witnesses are very important for the case. Hence, prayed for allowing the application and issue the summons to the Investigation Officer and other witnesses mentioned in the application as per section 311 of Cr. P. C.
2. The learned counsel for accused filed his reply and strongly opposed the application. It is submitted that, sufficient opportunity was given to the prosecution to conduct the trial. But, the prosecution has failed to secure the presence of witnesses. The case is old one. Hence, prayed for dismissal of application.
3. Read the application and say. Perused the record. It appears that, the Investigation Officer filed the charge-sheet on 27/01/2020 and the charge were framed against the accused on 04/02/2020. Therefore, it appears that, the time of more than three years has been given to the prosecution to finish the evidence of witnesses. However, in three years the prosecution has examined only two witnesses. The record shows that, the summons were issued to Investigation Officer since long. But, the prosecution has failed to secure the presence of Investigation Officer and other witnesses. Hence, it is clear that more than sufficient opportunity was given to the prosecution.
4. The speedy trial is the fundamental right of accused. The learned APP cannot prolong the case for unlimited duration without just and proper reason. Therefore, it is clear that the prosecution is misusing the power. In

this context an useful reference can be made to the Judgment of Hon'ble Supreme Court in case of *Swapan Kumar Chatterjee Vs. C.B.I. (2019) 14 SCC 328* wherein it is held that, the power under section 311 is not to be exercised if application has been filed as abuse of process of law. Thus, where prosecution evidence has been closed long back and reason for non-examination of witness earlier are not satisfactory, the re-summoning of witness at belated stage would cause great prejudice to the accused and should not be allowed. Similarly, Court should not encouraged filing of successive application for recall of the witness under section 311 of Cr. P. C. Hence, in view of the aforesaid Judgment of Hon'ble Supreme Court it is clear that, the power under section 311 of Cr. P. C. cannot be used if the prosecution abused the process of law. In the present application the learned APP has not given any reason for failure to complete the evidence within more than three years. No explanation has been given by the learned APP in his application. On perusal of application it appears that, the application was filed in very casual manner. This casual approach of learned APP clearly shows that the prosecution is not interested in completing the trial in proper manner provided by the Cr. P. C. and misuse the process of law. Hence, application is liable to be rejected. Accordingly, I pass the following order.

ORDER

The application Exh.28 is hereby rejected.

(D. S. Sharma)
Judicial Magistrate First Class
Manora. Dist. Washim.

Date : 28/08/2023

CERTIFICATE

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

Name of Stenographer :- Smt. R. K. Chavhan, (L.G.)

Court Name :- (Shri. D. S. Sharma)
Civil Judge (Jr.Dn.) and J.M.F.C.,
Manora. Dist. Washim.

Date :- 28.08.2023

Order signed by the :- 28.08.2023
presiding officer on

Order uploaded on :- 28.08.2023