

**IN THE COURT OF THE JUDICIAL MAGISTRATE, FAST TRACK COURT,
OMALUR.**

PRESENT: THIRU. M.A. SUVEDHARANYAN, B.A., B.L., (Hons)

Judicial Magistrate, Fast Track Court, Omalur.

FRIDAY, this the 5th day of March 2021

CMP.No.315/2021 In STC . No.43/2020

R. Rajarajeswari

... Petitioner/Accused

Vs

A. Shanmugasundaram

... Respondent/Complainant

This petition came up before me on 05-03-2021 for both side enquiry in the presence of Tr. P. Vijayakumar Advocate for the Petitioner/Accused and Tvl. M. Thiyagarajan, D. Senthilkumar and A.M. Sathish, Advocates for the Respondent/Complainant. Records perused. Both side arguments heard, considering the records and arguments advanced, this Court delivered the following:

//ORDER//

This petition is filed U/s 311 Crpc by the Petitioner/Accused praying for recalling the PW1 to re-examining him. The petitioner herein is the accused in main case and the Respondent herein is the complainant in main case. The parties are referred to as per their original status in the main complaint herein after.

1.The concise of Petitioner/Accused's Application:-

The Accused submits that she has cross examined the PW1 but not cross examined the PW2 due to non availability of certain documents. The accused ends up with a prayer to allow the application in order to prove her innocence and to reach just decision in the case.

2.The Respondent/Complainant's counter in brief:-

The complainant contested the application by submitting that the accused has not cross examined the PW2 inspite of several opportunities rendered to her. This application is opted by the complainant without stating the particulars of document which she stated in her petition and only to drag on the case. The accused prays to

dismiss the petition since it is devoid of any valid reasons.

3. The moot point to be determined is whether there is any ground to allow the application filed under section 311 of CrPC to recall and re-examine the PW1 at this stage?

Heard both sides. Perused the records.

4. The accused counsel put forth his submissions by reiterating the averments in the application. He argued that the petition is to be necessarily allowed to reach out the just decision in the case and he must be given an opportunity to prove her case.

5. Per contra, the counsel of complainant advanced his arguments, by reiterating the averments in counter statement and no particulars have been mentioned in the petition based on which the accused wants to cross examine the PW2 and the same deserves to be dismissed.

6. Now, the point requires to be determined by this court is whether there is any ground to allow the application filed under section 311 of CrPC to recall and re-examine the PW1.

7. For ready reference, **Section.311 of crpc** is as below:

Power to summon material witness, or examine person present. - Any Court may, at any stage of any inquiry, trial or other proceeding under this Code, summon any person as a witness, or examine any person in attendance, though not summoned as a witness, or recall and re-examine any person already examined; and the Court shall summon and examine or recall and re-examine any such person if his evidence appears to it to be essential to the just decision of the case.

7.1. The section allows recalling and reexamining of any person who has been already examined, at any stage of the case for it's just decision. But it should not be done as a matter of course. Recall could be permitted if it is essential for the just decision of the case.

8. Having considered both side arguments, for perceiving the concept underlying in section 311, Crpc this court lays it's reference to **Zahira Habibullah Sheikh and Anr .vs. State of Gujarat and others, 2006 (3) SCC 374** as under:

8.1. The object underlying section 311 of the code is that there may not be failure of

justice on account of mistake of either party in bringing the valuable evidence on record or leaving ambiguity in the statements of the witnesses examined from either side.

8.2. *"The determinative factor is whether it is essential to the just decision of the case. the section is not limited only for the benefit of the accused and **it will not be an improper exercise of the powers of the court to summon a witness under the section merely because the evidence supports the case of the prosecution and not that of the accused.** The section is a general section which applies to all proceedings, enquiries and trials under the code and empowers the magistrate to issue summons to any witness at any stage of proceedings, trial or enquiry. In section 311 the significant expression that occurs is "at any stage of any enquiry or trial or other proceeding under this code". It is however to be borne in mind that whereas the section confers a very wide power on the court on summoning witnesses, the discretion conferred is to be exercised judiciously, as the wider the power the greater is the necessity for application of judicial mind."*

9. On perusal of records and evidence, this court finds that the accused had been absent for so many hearings during the case was being posted for PW2 cross examination.

10. Hence this court closes the stage of PW2 cross examination to be done by the accused. Now the case has been posted for Questioning of accused U/s 313 (I) (b) Crpc. At this juncture the present petition has been filed.

11. It is trite law that both the parties in a case shall be rendered equal and sufficient opportunities to prove their case. In the present case, the accused has not cross examined the PW2 and sans cross examination of PW2 the evidence was closed. Hence, it is just and necessary to give opportunity to the accused to cross examine the PW2. At the same time it is pertinent to point out here that the case was posted for cross examination of PW2 on the dates viz., 12-02-2021, 16-02-2021, 18-02-2021. On all the said dates the accused has been absent and managed to obtain adjournments.

12. Hence this court is inclined to allow the application with costs to curtail the

attitude of accused in protracting the proceedings in future.

13. Bearing in mind, the afore cited Judgment of the Hon'ble Supreme court, and the concept under section 311 CrPC, this Court finds that the present application is necessarily to be allowed to reach out the just decision in the case.

14. This court, having regard to aforesaid discussions, concludes that there is sufficient ground to justify the recall of PW2. who was already been examined in chief.

15. Discovering sufficient factors to allow the application and to reach out the just decision in the case, this court allows the application directing the accused to pay a cost of Rs. 500/-(Rs Five Hundred Only) to be paid towards the District Legal Services Authority, Salem on or before 12-03-2021, failing which the petition stands automatically dismissed.

This Order directly dictated to the Typist and typed by her in computer and taken print out and after rectification of mistake, Pronounced by me in open court, this the 5th day of March 2021.

**Sd/ M.A. Suvedharanyan,
Judicial Magistrate,
Fast Track Court, Omalur.**