

Sessions Case No. 09 of 2014

Order No. 27 dated 14. 11. 2019 :-

Sole accused on CB is present and so his Ld. Lawyer.

Ld. PP in charge is also present.

The petition dated 05. 09. 2019 is taken up for hearing. Heard Ld. Lawyer for petitioner as well as Ld. Lawyer for accused. Considered. Perused the petition dated 05. 09. 2019.

Upon such perusal and hearing, it reveals that the PW-1 has lodged complaint in the form of statement to the police upon which FIR was started but due to inadvertence, at the time of examination of PW-1, his signature on said statement has not been shown to witness for identification that being so, by filing this present petition under Section 311 CrPC, Ld. PP in charge prays for recalling PW-1 for his re-examination on the ground mentioned here-in-before.

Ld. Lawyer for the accused raised vehement objection by submitting that he will be prejudiced, if the present petition is allowed and PW-1 is further recall for re-examination. As such, Ld. Lawyer for the accused submitted for rejection of said petition under Section 311 CrPC.

Considered.

Upon perusal of petition dated 05. 09. 2019, hearing Ld. Lawyers for both sides as well as evidence of PW-1 it appears to this court that during examination of PW-1 he deposed that his statement was recorded by police and as said statement was not shown, Ld. PP in charge prayed for recalling PW-1. The Section 311 CrPC mandates that any court at any stage of any inquiry, trial or other proceeding under the Code of Criminal Procedure, recall and re-examine any person already examined, if such evidence appears to be to the court to be essential to the just decision of the case.

The FIR is the vital piece of document though it is not a substantial piece of evidence and if the signature on the statement of PW-1 upon which FIR was started is not brought on record as evidence, there will be every chance of miscarriage of justice and the administration of substantial justice will be prejudiced. Further misquoting of Section in any petition does not ip-so-facto wash out the recitals of the petitions. Accordingly, the petition of prosecution dated 05. 09. 2019 is considered and allowed.

PW-1 is recalled for his re-examination with liberty to accused to cross-examine him on the point upon which he has been recalled.

Thus, the petition dated 05. 09. 2019 is disposed off on contest.

PW-1 is present. He is put in dock and re-examine in chief and he is cross-examined in part and discharged. The case is adjourned on the prayer of Ld. Lawyer for the accused person.

Fixing: 21. 12. 2019 for cross-examination of PW-1.

Accused person is as before.

Dictated & corrected by me.

Addl. Dist. & Sessions Judge  
1<sup>st</sup> Fast Track Court, Calcutta.  
14. 11. 2019

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