

C.R. 119/2012 (Regn. No. 119/2012)

Order dt. 12-04-2023.

Both sides file respective hazira. Today is fixed for hearing petition u/s. 311 of Cr.P.C. The record is taken up for hearing petition u/s. 311 of Cr.P.C.

By the petition u/s. 311 of Cr.P.C. filed on 27-09-2022 the accused has prayed for allowing him to depose as D.W. for the interest of justice on the ground that evidence of D.Ws was closed by the Court on account of petition praying for time being not moved.

Heard. Perused. Considered.

It appears that by order dated 13-02-2020 the Court allowed the petition u/s. 315 of Cr.P.C. of the accused permitting to depose as defence witness. On 10-05-2022 i.e. the date fixed for evidence of D.Ws, petition praying for time filed on behalf of the accused was rejected and accordingly, evidence of D.Ws was closed and date was fixed for argument. Subsequently on 27-09-2022 the accused filed the instant petition u/s. 311 of Cr.P.C. According to the provisions of section 311 of Cr.P.C., any Court may, at any stage of any inquiry, trial or other proceeding under this Code, summon any person as witness, or examine any person in attendance, though not summoned as 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 for the just decision of the case. Again according to the provisions of section 315 (1) of Cr.P.C., any person accused of an offence before a Criminal Court shall be a competent witness for the defence ; and may give evidence on oath in disproof of the charges made against him or any person charged together with him at the same trial. Provided that – (a) he shall not be called as a witness except on his own request in writing ; (b) his failure to give evidence shall not be made the subject of any comment by any of the parties or the Court or give rise to any presumption against himself or any person charged together with him at the same trial. Therefore, from plain reading of the provisions it is very much clear that scope of the provisions of section 311 of Cr.P.C. and the provisions of section 315 of Cr.P.C. are altogether different. In this case by order dated 13-02-2020 this Court allowed the petition u/s. 315 of Cr.P.C. of the accused permitting him to depose as defence witness. But thereafter for non availing of the opportunity on the part of the accused evidence of D.Ws was closed by order dated 10-05-2022. Now the accused cannot get the benefit of the provisions of section 311 of Cr.P.C. to adduce evidence on his behalf since he did not examine himself after being allowed by the Court as per provisions of section 315 of Cr.P.C. Moreover, the provisions of section 315 of Cr.P.C. make it very much clear that no adverse inference can be drawn against the accused for his not examining himself as per order dated 13-02-2020. According to the provisions of section 315 of Cr.P.C., the accused would not be prejudiced in any way for not examining himself as defence witness. Considering all aspects, I am not inclined to allow the prayer of the accused as per the petition u/s. 311 of Cr.P.C.

Hence, prayer of the accused as per the petition u/s. 311 of Cr.P.C. stands rejected. The said petition is disposed of accordingly.

To 14-06-2023 for argument.

Typed and printed by me.

Sd/-

A.C.J.M., Kakdwip.

Sd/-

A.C.J.M., Kakdwip.