

Sessions Case No. 1 of 2016**CNR No.WBUD01-000101-2016****J.O Code No. WB01277****Order No.74****Dated:27.09.2023**

Both the accused persons on CB are present before the Court today by filing hazira.

Record is taken up for hearing of the application dated 13.09.2022 preferred from the end of the prosecution u/s 311 of Cr.P.C.

Both the Ld.Spl.Public Prosecutor and the Ld. Advocate for the accused are present.

Heard the Ld. Advocates representing their individual side at length.

Ld. Spl.PP opened his submission in support of his application by drawing my attention to the contents of the same. As per the Ld.Spl.PP the circumstance which arose through the examination of the witnesses, compelled him to bring on record an application u/s 311 of Cr.PC in the midst of the testimony of the prosecution witnesses and the necessity arose on account of the inadvertent mistake from the end of the I.O of this case to cite the ballistic expert as morefully mentioned in the application under reference as a CS witness. In the words of the Ld. Spl.PP, the inculpatory facts and circumstance which have arose in the instant case against the accused and proof of which is essential through adducing cogent evidence from the end of the prosecution, necessitates the placing on record the evidence of the said scientific expert in the instant case. It was also ventilated from the end of the prosecution that a restraint will occur creating a stumbling block for the Ld. Court to arrive at a just decision in the instant case by weighing the balance of the guilt and innocence of the accused until and unless the evidence of the scientific expert is brought on record. As per the Ld.Spl.PP under no iota of imagination, it is to be construed that the prosecution has tried to plug the loopholes in the prosecution case by way of taking the advantage of getting the evidence of the scientific expert as named in the said application. The Ld.Spl.PP winded up his submission in respect of the application under reference by canvassing that the meaning and purport of section 311 of Cr.PC bestows a plenary power upon the Ld. Court to summon any person as a witness or examine any person though not summoned, if such evidence appeals to the Court to be a significant one having relevancy to the facts and circumstance associated with a criminal proceeding.

Ld. Advocate representing the accused has objected tooth and nail to the petition preferred by the accused persons under section 311 of Cr.PC. At the very onset, the defence side drew my attention to the fact that the

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application has been preferred from the end of the prosecution at a stage when the testimony of the CS witnesses has not been exhausted. As per the Ld. Counsel representing the defence, the opportune moment has not arrived for the Ld. Court to appreciate the necessity of the examination of the ballistic expert in the instant case, to be examined from the side of the prosecution. In other words, Ld. Defence Counsel has tried to emphatically ventilate that it will not be a prudent and rational approach to grant the scope to the prosecution to adduce the evidence of ballistic expert as morefully described in the petition preferred u/s 311 of Cr.PC by allowing the same. The defence summed up the submissions with a prayer for dismissal of the application preferred under section 311 of Cr.PC at this stage.

Before I steer my discussion in the path of adjudication of the issues attached with the application preferred under section 311 of Cr.PC, it is incumbent on my part to take a glance of the provisions of this section. On a punctilious reading of the provisions as engrafted in the said section, it is found that the said section has demarcated the scope of adducing additional evidence in a criminal trail into two separate compartments, the first one deals with the capacity of the Ld. Court presiding over a criminal case to summon any person as a witness or examine any person in attendance though not summoned as a witness and the second one contemplates the power of the Ld. Court to recall and re-examine any person, who has been already examined. The section lays down a condition precedent for the exercise of the power of the Ld. Court as envisaged above and such a condition pertains to the satisfaction of the Ld. Court that such evidence in either of the forms as ventilated above is an essential pre-requisite to arrive at a just decision of the case. The provision of section 311 of Cr.PC are thus couched in the widest possible terms and calls for no limitation either with regard to the stage at which the powers of the Court should be exercised or with regard to the manner in which it should be exercised. It is not only the prerogative but also the plain duty of the Court to examine the witness in the form of additional evidence, if it considers absolutely necessary for doing justice between the State and the subject. In this context, I would like to refer to a decision of the Hon'ble Supreme Court as reported in AIR 2009, SC 69, wherein the Hon'ble Court observed "Section 311 is not limited only for benefit of accused. Determinative factor for exercise of power is whether it was essential for a just decision of case". In fact, section 311 Cr.PC is a supplementary provision enabling and in certain circumstances imposing on the Court the duty of examining a material witness, who, not be otherwise brought before it. The provisions of this section are divisible in two parts. The first part empowers the Court to exercise a discretion but the second part imposes a mandate

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upon the Ld. Court. However, the mandate will bind the Court as far as considering the adducing of additional evidence only if such evidence is essential to arrive at a just decision. This legal proposition was highlighted by the Hon'ble Supreme Court in a decision reported in AIR 1968, SC 178. The assessment of the requirement of the testimony of a person has to be made by the Ld. Court through exercise of prudence and rationality. In order words, before the Ld. Court arrives at a conclusion on the issue of requirement of the evidence of a witness for delivering a just decision in a particular case, all the facts and circumstances in conjunction with the evidence which have already cropped up in the case, have to be weighed with precision founded on a meticulous approach. Such a duty of the Ld. Court while adjudicating an application under section 311 of Cr.PC was accentuated and discussed at length by the Hon'ble Supreme Court in a case reported in AIR 2008, SC 1943.

Now, time has ripened for me to focus my attention on the material evidence which has already surfaced in the present case through the testimony of the witnesses advanced by the side of the prosecution. On a conjunctive analysis of the evidence of the said witnesses it becomes clear to me that the instant case is founded on circumstantial evidence.

On a panoptic and meticulous appreciation of the case record, I find that there is logic and substance in the submission advanced from the end of the prosecution to the extent that the ballistic expert as named in the petition preferred from the end of the prosecution is an essential and relevant witness who needs to be examined by the prosecution to facilitate the proper and cogent appreciation of the facts of the instant case so as to arrive at a logical conclusion on the allegations as leveled against the accused persons before drawing the line of conclusion on their guilt and penalization. The pendency of the examination of the other CS witnesses cannot create any legal impediment for the Ld. Court to appreciate and adjudicate the prayer advanced from the end of the prosecution to adduce additional evidence by bringing out an application u/s 311 of Cr.P.C. At the most if the application is allowed, the deposition of the said witness as named herein above can be kept in abeyance till the exhaustion of the other CS witnesses whom the prosecution intends to examine to substantiate the ground indicating the role played by the accused persons in the commission of the alleged crime. As already been highlighted in a catena of decisions delivered by the different Courts of the Land, the Courts dealing with an application u/s 311 of Cr.PC must apply the judicial acumen in a prudent and sensible manner to the facts of the case before drawing a conclusion as to whether the said application can be allowed or not. In the

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present case the facts and circumstances associated with the application under reference sketches out a situation which tilts the scale of balance for allowing the said application in favour of the prosecution.

Now, I drop the veil of my discussion on the subject under reference with the inference that the prosecution have succeeded in proving the requirement of additional evidence to be adduced from their end for enabling the Ld. Court to arrive at a just decision through adjudication of the instant trial.

Thus, the application preferred u/s 311 of Cr.PC from the end of the prosecution succeeds and the same stands allowed.

The application preferred u/s 311 of Cr.PC stands disposed of accordingly.

To 06.12.2023 for appearance of accused persons and further evidence of PW-9.

Dictated & Corrected by

**District & Sessions Judge
Uttar Dinajpur at Raiganj**

**District & Sessions Judge
Uttar Dinajpur at Raiganj**

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Later:
27.09.2023

No alamat is produced today.

On perusal of the record, it appears that one black colored Sony Xperia mobile was returned on zimnama bond to the owner with a direction to produce the same as and when called for by the Court.

Accordingly on the prayer of the Ld. Spl.PP, the said Tarulata Kundu w/o Pritam Kundu of Raghampur under P.S Karandighi, Dist: Uttar Dinajpur, who took the zimnama of the said mobile as mentioned above is directed to produce the article being black colored Sony Xperia mobile to the Ld. Court on the next date I.e on the date fixed i.e 06.12.2023.

Itahar P.S is directed to ensure production of the alamat i.e the black coloured Sony Xperia mobile on the date fixed below.

To date (06.12.2023) for further evidence of PW-9 and production of the aforesaid alamat.

Let a copy of this order be sent to O/C Itahar P.S for compliance.

Dictated & corrected by me.

District & Sessions Judge
Uttar Dinajpur

District & Sessions Judge
Uttar Dinajpur