

Present: Ld. APP for the state.
Accused on bail with counsel.

Order:-

1. This order of mine will dispose of an application U/s 311 Cr. P.C. for summoning the witness namely Nirmal Singh Numberdar of Vill. Upper Daroli P.S. Nangal.

2. It is argued by the Ld. APP for the State that due to inadvertent mistake the State could not mentioned the name of the witness at the time of preparing of the challan. It is argued that the evidence of the said witness appears to be essential to the just decision of the case. Hence, the Ld. APP for the State prayed that the above named witness be summoned. It is prayed that the application may kindly be allowed in the interest of justice.

3. Notice of the application was given to the accused who filed his reply and and prayed that the application of the prosecution may kindly be dismissed as the same has been filed merely to fill up the lacuna in the prosecution case which cannot be allowed at the belated stage of the case. It is further argued that the name of the witness to be examined was never mentioned in the name of witnesses, even though his statement U/S 161 Cr.P.C. was recorded. This does not give the liberty to the prosecution to get the witness examined after a gap of nine years. Hence, prayed the application be dismissed.

4. I have heard the rival contentions of the parties and have gone through the case file carefully. Even though the statement of the witnesses

recorded U/S 161 Cr.P.C. and his name was also mentioned in the list of witnesses but the witness was given up by the Ld. APP for the State. Now, the prosecution wants to get the witness examined as it is explained that due to inadvertent mistake the name of the witness could not be mentioned. It is pertinent to mention here that the witness was arrayed in the list of witnesses at Sr. No. 2 as Nirmal Singh Numberdar Vill. Daroli Upper as the person who had produced the accused. Now I am of the view that the application under Section 311 Cr.P.C. is maintainable. In this regard, the Judgment of the Hon'ble Punjab and Haryana High Court in case titled as 'Jagseer Singh alias Sonu alias Davinder Singh vs. St of Punjab' 2012(2) RCR (Criminal) page 56 in which the Hon'ble Court has held that the principle is well settled that the exercise of power under Section 311 Cr. P.C., should be restored to only with the object of finding out the truth or obtaining the proper proof of such facts which lead to a just and correct decision of the case, this being the primary duty of a criminal Court. Even Section 311 of Cr. P.C. also provides for summoning of the witness if his evidence appears to be essential to the just decision of the case. In the present case the witness is alleged to have produced the accused as it is also alleged that the accused has made extra judicial confession in front of Nirmal Singh.

5. In view of the ratio of the judgment and from facts of the present case, this Court is of the view that in the interest of justice the application in hand is allowed, subject to only one opportunity to the prosecution to get the evidence of Nirmal Singh Numberdar Vill. Upper Daroli. Ahlmad

is directed to issue summons to this witness along with the witnesses at
Sr. No. 5 and 6 subject to last and final opportunity to the prosecution.

Announced in open Court
13.03.2020

Papalvir Thakur-II

Roopa Dhaliwal-UID No.PB-0350
Sub Divisional Judicial Magistrate
Nangal

Present: Ld. APP for the state.
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Arguments heard. Vide my separate detailed order of even date the application U/s 311 Cr.P.C disposed off. Now the case is adjourned to 24.03.2020 for prosecution evidence subject to last opportunity. Let summons to witness Nirmal Singh Numberdar along with the witness listed at Sr. No. 5 and 6 be issued for the date fixed subject to last and final opportunity to the prosecution.

Announced in open Court
13.03.2020

Papalvir Thakur-II

Roopa Dhaliwal-UID No.PB-0350
Sub Divisional Judicial Magistrate
Nangal