



CRL.P No. 6288 of 2022

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

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DATED THIS THE 20TH DAY OF JULY, 2022

BEFORE

THE HON'BLE MR JUSTICE M.NAGAPRASANNA

CRIMINAL PETITION NO. 6288 OF 2022

BETWEEN:

SRI. PERIYASWAMY M.,

...PETITIONER

(BY SRI SATHISH C., ADVOCATE)

AND:

STATE OF KARNATAKA BY
KONANKUNTE POLICE STATION

BENGALURU - 560 062

(REPRESENTED BY LEARNED STATE PUBLIC
PROSECUTOR)

...RESPONDENT

(BY SMT.K.P.YASHODHA, HCGP.)



CRL.P No. 6288 of 2022

THIS CRIMINAL PETITION IS FILED UNDER SECTION 482 OF CR.P.C., PRAYING TO A. SET ASIDE THE ORDER DATED 10.06.2022 PASSED BY THE ADDL. CIVIL AND SESSIONS JUDGE, FTSC-III AT BANGALORE IN SPL.C.C.NO.233/2020.

B. ALLOW THE PETITIONER/ACCUSED TO ADDUCE DEFENCE EVIDENCE BY REOPENING THE STAGE OF DEFENCE EVIDENCE IN SPL.C.C.NO.233/2020 ON THE FILE OF THE ADDL. CIVIL AND SESSIONS JUDGE, FTSC-III AT BANGALORE.

THIS CRIMINAL PETITION COMING ON FOR ADMISSION THIS DAY, THE COURT MADE THE FOLLOWING:

ORDER

The petitioner is before this Court calling in question an order dated 10.06.2022 passed in Spl.C.C.No.233/2020, whereby the Additional Civil and Sessions Judge FTSC - III, Bengaluru, has declined the plea of the petitioner to adduce the defence witnesses from the stage of defence evidence.

2. Heard Sri Sathish C., learned counsel for the petitioner and Smt. K.P.Yashodha, learned High Court Government Pleader for the respondent.

3. Brief facts leading to the filing of the petition as borne out from the pleadings are as follows:



CRL.P No. 6288 of 2022

A complaint comes to be registered against the petitioner which becomes a crime in crime No.48/2020 on 11.02.2020 for offences punishable under Sections 8 and 12 of the Protection of Children from Sexual Offences Act 2012 (for short 'the POCSO Act') and Section 354 of the IPC. The police after investigation have filed a charge sheet including the offence punishable under Section 376 of the IPC read with Sections 5(n), 6, 8 and 12 of the POCSO Act. The trial is set in motion and is in progress. On completion of the evidence of the prosecution by examination of PWs.1 to 9 and cross-examination by the accused, on 24.05.2022, the statement of the accused under Section 313 of the Cr.P.C. is also recorded.

4. The issue in the case at hand is not with regard to the merit of the matter or examination of witnesses by the prosecution. The issue is with regard to the accused filing an application before the concerned Court seeking adducing of defence evidence as at the relevant point in time, when he was to render the defence evidence, he was in judicial custody and could not instruct the counsel to lead the defence evidence. It is in that light, an application is filed before the concerned Court. The concerned Court by its order dated 10.06.2022,



CRL.P No. 6288 of 2022

declines to accede the request of the accused petitioner for leading of defence evidence, on the ground that the burden was on the prosecution to prove the guilt of the accused beyond all reasonable doubt and permit the accused to examine five witnesses, does not arise. Challenging this order of the Sessions Judge, the petitioner has knocked the doors of this Court in the subject petition.

5. Learned counsel for the petitioner would contend in vehemence that the petitioner has right to lead defence evidence as he is facing charges which can land him in imprisonment for more than three years. He was not able to instruct the counsel for leading defence evidence as he was in custody upto 21.06.2022. Being in custody, he files an application under Section 311 of the Cr.P.C. He would submit that the right to lead defence evidence cannot be taken out on the ground that the burden is on the prosecution.

6. On the other hand, learned High Court Government Pleader would seek to defend the order on the ground that the intention of the petitioner is only to drag the proceedings since the issue concerns the afore-quoted offences punishable under



the POCSO Act. The trial has to be concluded without any loss of time and seeks dismissal of the petition.

7. I have given my anxious consideration to the submissions made by the learned counsel appearing for the petitioner and the learned High Court Government Pleader appearing for the respondent and perused the material on record.

8. The afore-narrated facts are not in dispute. Before embarking upon the merits of the case, I deem it appropriate to notice the law laid down by the Apex Court interpreting Section 311 Cr.P.C. Section 311 of the Cr.P.C. reads as follows:

"311. 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."

(Emphasis supplied)

The Apex Court in plethora of cases has interpreted the importance of adducing evidence and the power under Section 311 of the Cr.P.C. The Apex Court in the case of **NATASHA SINGH VS. CBI**¹, has held as follows:

"15. The scope and object of the provision is to enable the court to determine the truth and to render a just decision after discovering all relevant facts and obtaining proper proof of such facts, to arrive at a just decision of the case. Power must be exercised judiciously and not capriciously or arbitrarily, as any improper or capricious exercise of such power may lead to undesirable results. An application under Section 311 CrPC must not be allowed only to fill up a lacuna in the case of the prosecution, or of the defence, or to the disadvantage of the accused, or to cause serious prejudice to the defence of the accused, or to give an unfair advantage to the opposite party. Further, the additional evidence must not be received as a disguise for retrial, or to change the nature of the

¹ **(2013) 5 SCC 741**



*case against either of the parties. Such a power must be exercised, provided that the evidence that is likely to be tendered by a witness, is germane to the issue involved. An opportunity of rebuttal however, must be given to the other party. **The power conferred under Section 311 CrPC must therefore, be invoked by the court only in order to meet the ends of justice, for strong and valid reasons, and the same must be exercised with great caution and circumspection. The very use of words such as "any court", "at any stage", or "or any enquiry, trial or other proceedings", "any person" and "any such person" clearly spells out that the provisions of this section have been expressed in the widest possible terms, and do not limit the discretion of the court in any way. There is thus no escape if the fresh evidence to be obtained is essential to the just decision of the case. The determinative factor should therefore be, whether the summoning/recalling of the said witness is in fact, essential to the just decision of the case.***

16. Fair trial is the main object of criminal procedure, and it is the duty of the court to ensure that such fairness is not hampered or threatened in any manner. Fair



trial entails the interests of the accused, the victim and of the society, and therefore, fair trial includes the grant of fair and proper opportunities to the person concerned, and the same must be ensured as this is a constitutional, as well as a human right. Thus, under no circumstances can a person's right to fair trial be jeopardised. Adducing evidence in support of the defence is a valuable right. Denial of such right would amount to the denial of a fair trial. Thus, it is essential that the rules of procedure that have been designed to ensure justice are scrupulously followed, and the court must be zealous in ensuring that there is no breach of the same. [*Vide Talab Haji Hussain v. Madhukar Purshottam Mondkar [AIR 1958 SC 376 : 1958 Cri LJ 701] , Zahira Habibulla H. Sheikh v. State of Gujarat [(2004) 4 SCC 158 : 2004 SCC (Cri) 999 : AIR 2004 SC 3114] , Zahira Habibullah Sheikh (5) v. State of Gujarat [(2006) 3 SCC 374 : (2006) 2 SCC (Cri) 8 : AIR 2006 SC 1367] , Kalyani Baskar v. M.S. Sampornam [(2007) 2 SCC 258 : (2007) 1 SCC (Cri) 577] , Vijay Kumar v. State of U.P. [(2011) 8 SCC 136 : (2011) 3 SCC (Cri) 371 : (2012) 1 SCC (L&S) 240] and Sudevanand v. State [(2012) 3 SCC 387 : (2012) 2 SCC (Cri) 179] .]*"]

(Emphasis supplied)



A little later, the Apex Court in the case of **RAJARAM PRASAD YADAV VS. STATE OF BIHAR²**, wherein it is held as follows:

"17. From a conspectus consideration of the above decisions, while dealing with an application under Section 311 CrPC read along with Section 138 of the Evidence Act, we feel the following principles will have to be borne in mind by the courts:

17.1. Whether the court is right in thinking that the new evidence is needed by it? Whether the evidence sought to be led in under Section 311 is noted by the court for a just decision of a case?

17.2. The exercise of the widest discretionary power under Section 311 CrPC should ensure that the judgment should not be rendered on inchoate, inconclusive and speculative presentation of facts, as thereby the ends of justice would be defeated.

17.3. If evidence of any witness appears to the court to be essential to the just decision of the case, it is the power of the court to summon and examine or recall and re-examine any such person.

17.4. The exercise of power under Section 311 CrPC should be resorted to only with the object of finding out the truth or obtaining proper proof for such facts, which will lead to a just and correct decision of the case.

² **(2013) 14 SCC 461**



17.5. *The exercise of the said power cannot be dubbed as filling in a lacuna in a prosecution case, unless the facts and circumstances of the case make it apparent that the exercise of power by the court would result in causing serious prejudice to the accused, resulting in miscarriage of justice.*

17.6. *The wide discretionary power should be exercised judiciously and not arbitrarily.*

17.7. The court must satisfy itself that it was in every respect essential to examine such a witness or to recall him for further examination in order to arrive at a just decision of the case.

17.8. The object of Section 311 CrPC simultaneously imposes a duty on the court to determine the truth and to render a just decision.

17.9. *The court arrives at the conclusion that additional evidence is necessary, not because it would be impossible to pronounce the judgment without it, but because there would be a failure of justice without such evidence being considered.*

17.10. Exigency of the situation, fair play and good sense should be the safeguard, while exercising the discretion. The court should bear in mind that no party in a trial can be foreclosed from correcting errors and that



if proper evidence was not adduced or a relevant material was not brought on record due to any inadvertence, the court should be magnanimous in permitting such mistakes to be rectified.

17.11. *The court should be conscious of the position that after all the trial is basically for the prisoners and the court should afford an opportunity to them in the fairest manner possible. In that parity of reasoning, it would be safe to err in favour of the accused getting an opportunity rather than protecting the prosecution against possible prejudice at the cost of the accused. The court should bear in mind that improper or capricious exercise of such a discretionary power, may lead to undesirable results.*

17.12. *The additional evidence must not be received as a disguise or to change the nature of the case against any of the party.*

17.13. *The power must be exercised keeping in mind that the evidence that is likely to be tendered, would be germane to the issue involved and also ensure that an opportunity of rebuttal is given to the other party.*

17.14. The power under Section 311 CrPC must therefore, be invoked by the court only in order to meet the ends of justice for strong and valid reasons and the same must



be exercised with care, caution and circumspection. The court should bear in mind that fair trial entails the interest of the accused, the victim and the society and, therefore, the grant of fair and proper opportunities to the persons concerned, must be ensured being a constitutional goal, as well as a human right."

(Emphasis supplied)

The Apex Court in the case of **MANJU DEVI VS. STATE OF RAJASTHAN³**, has held as follows:

"10. It needs hardly any emphasis that the discretionary powers like those under Section 311 CrPC are essentially intended to ensure that every necessary and appropriate measure is taken by the Court to keep the record straight and to clear any ambiguity insofar as the evidence is concerned as also to ensure that no prejudice is caused to anyone.

The principles underlying Section 311 CrPC and amplitude of the powers of the court thereunder have been explained by this Court in several decisions [Vide Mohanlal Shamji Soni v. Union of India, 1991 Supp (1) SCC 271 : 1991 SCC (Cri) 595; Zahira Habibulla H. Sheikh v. State of

³ **(2019) 6 SCC 203**



*Gujarat, (2004) 4 SCC 158 : 2004 SCC (Cri) 999; Mina Lalita Baruwa v. State of Orissa, (2013) 16 SCC 173 : (2014) 6 SCC (Cri) 218; Rajaram Prasad Yadav v. State of Bihar, (2013) 14 SCC 461 : (2014) 4 SCC (Cri) 256 and Natasha Singh v. CBI, (2013) 5 SCC 741 : (2013) 4 SCC (Cri) 828] . In *Natasha Singh v. CBI [Natasha Singh v. CBI, (2013) 5 SCC 741 : (2013) 4 SCC (Cri) 828] , though the application for examination of witnesses was filed by the accused but, on the principles relating to the exercise of powers under Section 311, this Court observed, inter alia, as under: (SCC pp. 746 & 748-49, paras 8 & 15)**

"8. Section 311 CrPC empowers the court to summon a material witness, or to examine a person present at "any stage" of "any enquiry", or "trial", or "any other proceedings" under CrPC, or to summon any person as a witness, or to recall and re-examine any person who has already been examined if his evidence appears to it, to be essential to the arrival of a just decision of the case. Undoubtedly, CrPC has conferred a very wide discretionary power upon the court in this respect, but such a discretion is to be exercised judiciously and not arbitrarily. The power of the court in this context is very wide, and in exercise of the same, it may summon any person as a witness at any stage of the trial, or other proceedings. The court is competent to exercise such power even



suo motu if no such application has been filed by either of the parties. However, the court must satisfy itself, that it was in fact essential to examine such a witness, or to recall him for further examination in order to arrive at a just decision of the case.

15. The scope and object of the provision is to enable the court to determine the truth and to render a just decision after discovering all relevant facts and obtaining proper proof of such facts, to arrive at a just decision of the case. Power must be exercised judiciously and not capriciously or arbitrarily, as any improper or capricious exercise of such power may lead to undesirable results. An application under Section 311 CrPC must not be allowed only to fill up a lacuna in the case of the prosecution, or of the defence, or to the disadvantage of the accused, or to cause serious prejudice to the defence of the accused, or to give an unfair advantage to the opposite party. Further, the additional evidence must not be received as a disguise for retrial, or to change the nature of the case against either of the parties. Such a power must be exercised, provided that the evidence that is likely to be tendered by a witness, is germane to the issue involved. An opportunity of rebuttal however, must be given to the other party. The power conferred under Section 311 CrPC must therefore, be invoked by the court only in order to meet the ends of justice, for strong and valid reasons, and the same must be exercised with great caution and



circumspection. The very use of words such as "any court", "at any stage", or "or any enquiry, trial or other proceedings", "any person" and "any such person" clearly spells out that the provisions of this section have been expressed in the widest possible terms, and do not limit the discretion of the court in any way. There is thus no escape if the fresh evidence to be obtained is essential to the just decision of the case. The determinative factor should therefore be, whether the summoning/recalling of the said witness is in fact, essential to the just decision of the case."

(Emphasis in original)

15. In the given set of facts and circumstances, we are clearly of the view that the trial court disposed of the application under Section 311 CrPC on entirely irrelevant considerations and the High Court also failed to exercise its jurisdiction under Section 482 CrPC while overlooking and ignoring the material and relevant aspects of the case. In our view, the said application under Section 311 CrPC deserves to be allowed."

(Emphasis supplied)

Following the judgment of **MANJU DEVI** (*supra*), the Apex Court in the case of **STATE REP. BY THE DEPUTY**



SUPERINTENDENT OF POLICE VS. TR. N.

SEENIVASAGAN⁴, has held as follows:

*"13. In our view, having due regard to the nature and ambit of Section 311 of the CrPC, it was appropriate and proper that the applications filed by the prosecution ought to have been allowed. Section 311 provides that any Court may, at any stage of any inquiry, trial or other proceedings under the CrPC, 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". **The true test, therefore, is whether it appears to the Court that the evidence of such person who is sought to be recalled is essential to the just decision of the case.***

14. In Manju Devi v. State of Rajasthan⁴, a two-Judge bench of this Court noted that an application under Section 311 could not be rejected on the sole ground that the case had been pending for an inordinate amount of time (ten years there). Rather, it noted that

⁴ **2021 SCC ONLINE SC 212**



"the length/duration of a case cannot displace the basic requirement of ensuring the just decision after taking all the necessary and material evidence on record. In other words, the age of a case, by itself, cannot be decisive of the matter when a prayer is made for examination of a material witness". Speaking for the Court, Justice Dinesh Maheshwari expounded on the principles underlying Section 311 in the following terms:

"10. It needs hardly any emphasis that the discretionary powers like those under Section 311 CrPC are essentially intended to ensure that every necessary and appropriate measure is taken by the Court to keep the record straight and to clear any ambiguity insofar as the evidence is concerned as also to ensure that no prejudice is caused to anyone. The principles underlying Section 311 CrPC and amplitude of the powers of the court thereunder have been explained by this Court in several decisions [Vide Mohanlal Shamji Soni v. Union of India, 1991 Supp (1) SCC 271 : 1991 SCC (Cri) 595; Zahira Habibulla H. Sheikh v. State of Gujarat, (2004) 4 SCC 158 : 2004 SCC (Cri) 999; Mina Lalita Baruwa v. State of Orissa, (2013) 16 SCC 173 : (2014) 6 SCC (Cri) 218; Rajaram Prasad Yadav v. State of Bihar, (2013) 14 SCC 461 : (2014) 4 SCC (Cri) 256 and Natasha Singh v. CBI, (2013) 5 SCC 741 : (2013) 4 SCC (Cri) 828]. In Natasha Singh v. CBI [Natasha Singh v. CBI, (2013) 5 SCC 741 : (2013) 4 SCC (Cri) 828], though the application for examination of witnesses was



filed by the accused but, on the principles relating to the exercise of powers under Section 311, this Court observed, inter alia, as under : (SCC pp. 746 & 748-49, paras 8 & 15)

"8. Section 311 CrPC empowers the court to summon a material witness, or to examine a person present at "any stage" of "any enquiry", or "trial", or "any other proceedings" under CrPC, or to summon any person as a witness, or to recall and re-examine any person who has already been examined if his evidence appears to it, to be essential to the arrival of a just decision of the case. Undoubtedly, CrPC has conferred a very wide discretionary power upon the court in this respect, but such a discretion is to be exercised judiciously and not arbitrarily. The power of the court in this context is very wide, and in exercise of the same, it may summon any person as a witness at any stage of the trial, or other proceedings. The court is competent to exercise such power even suo motu if no such application has been filed by either of the parties. However, the court must satisfy itself, that it was in fact essential to examine such a witness, or to recall him for further examination in order to arrive at a just decision of the case.

15. The scope and object of the provision is to enable the court to



*determine the truth and to render a just decision after discovering all relevant facts and obtaining proper proof of such facts, to arrive at a just decision of the case. Power must be exercised judiciously and not capriciously or arbitrarily, as any improper or capricious exercise of such power may lead to undesirable results. An application under Section 311 CrPC must not be allowed only to fill up a lacuna in the case of the prosecution, or of the defence, or to the disadvantage of the accused, or to cause serious prejudice to the defence of the accused, or to give an unfair advantage to the opposite party. Further, the additional evidence must not be received as a disguise for retrial, or to change the nature of the case against either of the parties. Such a power must be exercised, provided that the evidence that is likely to be tendered by a witness, is germane to the issue involved. An opportunity of rebuttal however, must be given to the other party. **The power conferred under Section 311 CrPC must therefore, be invoked by the court only in order to meet the ends of justice, for strong and valid reasons, and the same must be exercised with great caution and circumspection. The very use of words such as "any court", "at any stage", or "or any enquiry, trial or other proceedings", "any person" and "any such person" clearly spells out that the provisions of this section have been expressed in the widest possible terms, and do***



not limit the discretion of the court in any way. There is thus no escape if the fresh evidence to be obtained is essential to the just decision of the case. The determinative factor should therefore be, whether the summoning/recalling of the said witness is in fact, essential to the just decision of the case."

(Emphasis in original)"

Considering all the judgments, the Apex Court in the case of **V.N.PATIL VS. K. NIRANJAN KUMAR**⁵, wherein it has held as follows:

"13. The scope of Section 311 CrPC which is relevant for the present purpose is reproduced hereunder:

"311. 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."

⁵ **(2021) 3 SCC 661**



14. *The object underlying Section 311 CrPC 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. The determinative factor is whether it is essential to the just decision of the case. The significant expression that occurs is "at any stage of any inquiry or trial or other proceeding under this Code". It is, however, to be borne in mind that the discretionary power conferred under Section 311 CrPC has to be exercised judiciously, as it is always said "wider the power, greater is the necessity of caution while exercise of judicious discretion".*

15. *The principles related to the exercise of the power under Section 311 CrPC have been well settled by this Court in Vijay Kumar v. State of U.P. [Vijay Kumar v. State of U.P., (2011) 8 SCC 136 : (2011) 3 SCC (Cri) 371 : (2012) 1 SCC (L&S) 240] : (SCC p. 141, para 17)*

"17. Though Section 311 confers vast discretion upon the court and is expressed in the widest possible terms, the discretionary power under the said section can be invoked only for the ends of justice. Discretionary power should be exercised consistently with the provisions of the Code and the principles of criminal law. The



discretionary power conferred under Section 311 has to be exercised judicially for reasons stated by the court and not arbitrarily or capriciously. Before directing the learned Special Judge to examine Smt Ruchi Saxena as a court witness, the High Court did not examine the reasons assigned by the learned Special Judge as to why it was not necessary to examine her as a court witness and has given the impugned direction without assigning any reason."

16. This principle has been further reiterated in Mannan Shaikh v. State of W.B. [Mannan Shaikh v. State of W.B., (2014) 13 SCC 59 : (2014) 5 SCC (Cri) 547] and thereafter in Ratanlal v. Prahlad Jat [Ratanlal v. Prahlad Jat, (2017) 9 SCC 340 : (2017) 3 SCC (Cri) 729] and Swapan Kumar Chatterjee v. CBI [Swapan Kumar Chatterjee v. CBI, (2019) 14 SCC 328 : (2019) 4 SCC (Cri) 839] . The relevant paragraphs of Swapan Kumar Chatterjee [Swapan Kumar Chatterjee v. CBI, (2019) 14 SCC 328 : (2019) 4 SCC (Cri) 839] are as under: (Swapan Kumar Chatterjee case [Swapan Kumar Chatterjee v. CBI, (2019) 14 SCC 328 : (2019) 4 SCC (Cri) 839] , SCC p. 331, paras 10-11)

"10. The first part of this section which is permissive gives purely discretionary authority to the criminal court and enables it at any stage of inquiry, trial or other proceedings under the Code to act in one



of the three ways, namely, (i) to summon any person as a witness; or (ii) to examine any person in attendance, though not summoned as a witness; or (iii) to recall and re-examine any person already examined. The second part, which is mandatory, imposes an obligation on the court (i) to summon and examine, or (ii) to recall and re-examine any such person if his evidence appears to be essential to the just decision of the case.

11. It is well settled that the power conferred under Section 311 should be invoked by the court only to meet the ends of justice. The power is to be exercised only for strong and valid reasons and it should be exercised with great caution and circumspection. The court has vide power under this section to even recall witnesses for re-examination or further examination, necessary in the interest of justice, but the same has to be exercised after taking into consideration the facts and circumstances of each case. The power under this provision shall not be exercised if the court is of the view that the application has been filed as an abuse of the process of law."

17. The aim of every court is to discover the truth. Section 311 CrPC is one of many such provisions which strengthen the arms of a court in its effort to unearth the truth by procedure sanctioned by law. At the same time, the discretionary power vested under Section 311 CrPC has to be exercised judiciously for strong and valid reasons and



with caution and circumspection to meet the ends of justice."

(Emphasis supplied)

On a coalesce of the afore-quoted judgments of the Apex Court and considering the purport or the spirit of Section 311 of the Cr.P.C., what would unmistakably emerge is, the power of the Court under Section 311 of the Cr.P.C. is wide but to be used with caution and circumspection, as the word deployed in Section 311 of the Cr.P.C. is at any stage of any inquiry, trial or any other proceedings under the Cr.P.C. Fair trial is the soul of criminal procedure and it is the duty of the Courts to ensure fairness and it is not hampered or threatened at any stage of the proceedings.

9. It is trite that fair trial includes affording of fair opportunity to the person concerned *albeit* the prosecution or the accused as the aim and object of every Court is to discover the truth. Section 311 of the Cr.P.C. is one of many such provision, which strengthens the arms of the Court to unearth the truth by procedure sanctioned by the law. This is the soul of the provision.



CRL.P No. 6288 of 2022

10. On the bedrock of the afore-quoted principles as enunciated by the Apex Court while interpreting Section 311 of the Cr.P.C., the facts in the case at hand will have to be noticed. The petitioner is charged under Sections 5(n), 6, 8 and 12 of the POCSO Act. The petitioner files an application seeking to adduce defence evidence after conclusion of his recording of statement under Section 313 of the Cr.P.C., by seeking reopening of the case from the stage of adducing such defence evidence. This is rejected by the concerned Court by a perfunctory order. The order of the concerned Court rejecting the application reads as follows:

"6. Admittedly the complainant police have filed charge sheet against the accused for the offences punishable U/Sec.354, 376 of IPC and Sec.4, 6, 8 and 12 of POCSO Act. The order sheet discloses that prosecution side evidence already been closed and even the accused was examined U/Sec.313 of Cr.P.C. wherein the accused denied the entire incriminating evidence available against him deposed by the witnesses. At this stage when the case is set down for arguments on merits the accused has come up with this application seeking permission to examine the witnesses before this court. In the application the accused has not



CRL.P No. 6288 of 2022

stated how these witnesses are relevant to this case and what they are going to depose before this court with respect to which fact in issue. Admittedly the accused in his application has not disclosed the role of these witnesses in this case and in the list furnished along with the application except disclosing the name of the witnesses stated that they are the neighbours and relative of this accused has not stated how they are relevant and what they are going to depose before this court. It is well settled principal of law that when the entire burden is on the prosecution to prove the guilt of the accused beyond all reasonable doubt, in such being the case, permitting the accused examine the 5 witnesses from his side does not arise. The accused has not made out any good valid goods to allow the application by permitting him to examine the witnesses before this court. There is no merits in the application. Hence, I answered point No.1 in the Negative and proceed to pass the following:

ORDER

*The application filed by the accused
U/Sec.311 Cr.P.C. is here by dismissed."*

Call on 17.06.2022."

The reason rendered for declining the application of the petitioner seeking adducing defence evidence is on the ground



CRL.P No. 6288 of 2022

that it is the burden of the prosecution to prove the case beyond all reasonable doubt and therefore, examination of the witnesses on the side of the defence does not arise. The concerned Court perhaps has blissfully ignored that the petitioner is facing charges under the provisions of the POCSO Act. Sections 29 and 30 of the POCSO Act draws presumption of guilt, unless the accused is proved innocent. The presumption however does not take away the duty of the prosecution to prove the foundational facts beyond all reasonable doubt, it is a reverse burden cast upon the accused under the provisions of the POCSO Act. In the teeth of the allegations under the POCSO Act, the concerned Court could not have rejected the application for adducing defence evidence on the specious plea that the burden is on the prosecution to prove the case beyond all reasonable doubt. Application under Section 311 of the Cr.P.C. should be ordinarily permitted unless the Court comes to conclude that it is a ruse to drag the proceedings or permitting it, would become an abuse of the process of the law. None of these traits exist in the case at hand. The accused who is facing charges that are grave ought



CRL.P No. 6288 of 2022

to be afforded opportunity to defend himself within the parameters of law.

11. For the aforesaid reasons, the following:

ORDER

- i. The Criminal Petition is allowed.
- ii. The order dated 10.06.2022, passed in Spl.C.C.No.233/2020, whereby the Additional Civil and Sessions Judge FTSC - III, Bengaluru, stands quashed.

I.A.No.1/2022 is disposed, as a consequence.

**Sd/-
JUDGE**

nvj