

Lakshmi and ors. Vs. State

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Court : Delhi

Decided On : Feb-01-1996

Reported in : 1996RLR196

Judge : Jaspal Singh, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 311

Appeal No. : Criminal Miscellaneous (Main) Appeal No. 173 of 1990

Appellant : Lakshmi and ors.

Respondent : State

Advocate for Pet/Ap. : Anil Soni and; H.C. Vashisht, Advs

Judgement :

Jaspal Singh, J.

(1) On 2 3.90 two Public Witness s. were examined name- ly, Krishan Kumar and Shiv Narain. Whereas Shiv Narain was cross-examined, Krishan Kumar was not, despite opportunity. Much thereafter, an application was moved u/S. 311 of the Code of Criminal Procedure for recalling PW1, Krishan Kumar besides other witnesses for cross-examination. The learned Mm declined the request as far as Krishan Kumar is concerned. Hence this petition.

(2) It is contended by the learned counsel for the petitioners that when PW1 Krishan Kumar was examined, the counsel for the petitioners was not available and came to the court only when PW2 Shiv Narain was under examination and that is why PW2 Shiv Narain was cross-examined and not Krishan Kumar who had, by that time, already left the court.

(3) There is nothing on the record to lend support to the version noticed above. Rather the record shows that opportunity was granted to the defense counsel to cross-examine PW1, Krishan Kumar but the same was not availed of. Significantly, even in the application under Section 311 the version now put forth about the absence of the counsel at the time of the examination of PW1 Krishan Kumar is conspicuous by its absence. However, the fact remains that PW1 Krishan Kumar was an extremely material witness and, in the absence of his cross-examination, his testimony may greatly prejudice the defense.

(4) Undoubtedly the decision & the discretion in regard to the application which falls within the first part of S. 311 of the Cr. P.C. is that of the trial court but then in matters like these, the role of the trial Magistrate is not akin to an uninterested bystander. The very width of the discretion vested in him requires of him a corresponding caution. The goal is to do complete justice. And, I do feel that here is a case where the learned Magistrate lost the grip. The cross-examination of the witness would obviously enable the court to arrive at the truth and ultimately to a just conclusion. The failure was of the counsel. Let the petitioners not suffer for that. Consequently, the Application is allowed.

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