

Gopal Prasad and ors. Vs. State

Gopal Prasad and ors. Vs. State

SooperKanoon Citation : sooperkanoon.com/763771

Court : Rajasthan

Decided On : Aug-24-2005

Reported in : RLW2005(4)Raj2695; 2005(4)WLC679

Judge : N.K. Jain, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 311 and 482

Appeal No. : S.B. Criminal Misc. Petition No. 1004 of 2005

Appellant : Gopal Prasad and ors.

Respondent : State

Advocate for Def. : B.K. Sharma, PP

Advocate for Pet/Ap. : D.G. Chaturvedi, Adv.

Disposition : Petition allowed

Judgement :

N.K. Jain, J.

1. The petitioners have filed this petition under Section 482 Cr.P.C. against the order dated 26th July, 2005 passed by the Special Judge, SC/ST Act Cases (Sessions Judge), Bharatpur in Special Case No. 55/98 whereby he rejected the application of the petitioners dated 8.7.05 filed under Section 311 Cr.P.C. to recall

the prosecution witness No. 3 Dr. B.L. Meena for cross-examination.

2. The learned Counsel for the petitioners submits that two FIRs bearing No. 220/95 and 221/95 were registered in between complainant and accused party. The petitioners also sustained injuries and they were medically examined by the same Dr. i.e. Dr. B.L. Meena who has been examined by the prosecutrix in the present case as PW.3. He submits that the injury reports of the accused persons were not available when Dr. B.L. Meena was examined by prosecution on 10.10.2002 therefore, he could not be cross examined on this point on that day. He submits that it is true that the same doctor cannot become defence witness but certainly he can be cross examined in respect of injuries sustained by the accused persons as they were also medically examined by him.

3. Under Section 311 of the Cr.P.C. any court may, at any stage of any enquiry, trial or the 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.

4. There is no dispute that cross cases were registered in between the accused and complainant party, therefore, injuries on the part of the accused persons become relevant and if they are placed on record they may help the accused persons. The injury reports of both the parties were prepared by the same doctor. However the injury report of the accused were not available to the petitioners at the time when the same doctor was examined by the prosecution in the same case. However, after considering all the facts and circumstances, I find that the recalling of Dr. B.L. Meena is essential in the present case for the just decision of the case.

5. Consequently, I allow this petition and quash the impugned order dated 26.7.05 passed by the trial Court. The application filed by the petitioners under Section 311 Cr.P.C. on 8.7.05 is allowed. The trial Court is directed to recall Dr. B.L. Meena PW 3 immediately and allow the accused persons to cross-examine him. The petition stands disposed of in the manner as indicated above.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com