

**Paramjeet Singh and anr. Vs. State and anr.**

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**Court :** Rajasthan

**Decided On :** Oct-29-2003

**Reported in :** 2004CriLJ2653; RLW2004(2)Raj1004; 2004(1)WLC698

**Judge :** N.N. Mathur, J.

**Acts :** Code of Criminal Procedure (CrPC) - Sections 311 and 482

**Appeal No. :** S.B. Criminal Misc. Petition No. 941 of 2002

**Appellant :** Paramjeet Singh and anr.

**Respondent :** State and anr.

**Advocate for Def. :** D.D. Calla, Public Prosecutor

**Advocate for Pet/Ap. :** N.L. Joshi, Adv.

**Disposition :** Petition dismissed

**Judgement :**

**N.N. Mathur, J.**

1. I have heard learned counsel for the petitioner and perused the order of the trial court namely Additional Chief Judicial Magistrate, Anoopgarh dated 16.11.2002 whereby he has allowed the application filed by the complainant Inderjeet Singh under Section 311 of the Code of Criminal Procedure for production of various files

pertaining to revenue proceedings. It appears that the second respondent Inderjeet Singh filed a complaint in the court of Judicial Magistrate, Anoopgarh complaining that the accused petitioner Paramjeet Singh has forged the will of deceased Rajendra Singh. The complaint was sent for investigation to S.H.O., Police Station, Anoopgarh under Section 156(3) of the Code of Criminal Procedure. After usual investigation the police filed a charge-sheet against the accused petitioner along with three other accused persons for offence under Section 419, 420, 467, 468, 471, 474, 477 & 120B I.P.C. During the trial the prosecution evidence was closed on 1.10.2002. On the same day the statement of the accused person was also recorded and the case was posted for final hearing on 18.10.2002. On 18.10.2002 the learned Magistrate heard the arguments and adjourned the case for 23.10.2002 for pronouncement of the judgment. Judgment was not pronounced on the said date and the case was adjourned for 28.10.2002. On 26.10.2002 the complainant filed an application under Section 311 of the Code of Criminal Procedure stating inter alia that the deceased Rajendra Singh had not executed any will. However, the accused Paramjeet Singh claiming a will in his favour approached to the Tehsildar (Colonisation) for mutation of the land in his name. In a revenue suit Paramjeet Singh claimed ownership of the land on the basis of the will in his favour. He also filed an application under Section 13(2) of the Code of Civil Procedure for placing the will on record. The complainant placed certified copies of all those documents. A prayer was made for summoning of the record and the official witnesses. The application was contested by the accused petitioner on the ground that the complainant cannot be permitted to fill up the lacuna in the prosecution case. The learned Magistrate thoroughly examined the controversy in depth and detail and arrived at the conclusion that summoning of the record was essential for the just decision of the case.

2. Mr. N.L. Joshi learned counsel appearing for the petitioner has vehemently argued that a serious miscarriage of justice has been caused to the accused petitioner inasmuch as the complainant has been given a free hand to plug in the holes by summoning the record of the revenue courts. The learned counsel has placed reliance on a decision of the Apex Court in *Mir Mohd. Omar and Ors. v. State of West Bengal (1)*, wherein the Apex Court disapproved the directions of the High Court giving liberty to the prosecution to recall the witnesses and ordering

deletion of the entire examination under Section 313 of the Code of Criminal Procedure. He has also relied upon two decisions of this Court being *Prabhu Ram v. State of Rajasthan* (2), and *Kanhaiya Lal v. State* (3). In both the cases the Court disapproved of permitting to produce evidence to the prosecution at the fag end of the trial. There can be no dispute that the proposition of law is laid down in the cases cited by the learned counsel.

3. The powers under Section 311 of the Code of Criminal Procedure are discretionary and the same has to be exercised with great care and caution in either way. No general rule can be made as to when and under what circumstances discretion to summon the witnesses ought to be exercised. The paramount consideration is doing justice to the case. Thus, if a court comes to the conclusion that for the just decision of the case a permission to produce certain evidence is essential, merely because arguments have been heard in a case at one stage and it is posted for the judgment is not a ground to limit the scope of passing the order under Section 311, as the court can pass such order at any stage. Before invoking the powers under Section 311 of the Judge has to take into account the circumstances and decide whether the course of examining witnesses after the entire case is closed would be so irregular that it may cause injustice to the accused the mere fact that the evidence is directed to be taken after the entire case is over is not in itself excess, of powers under Section 311. The provisions of Section 311 cannot be interpreted so as to limit powers of the court to examine the witnesses only before the conclusion of the arguments. In the instant case the learned Magistrate for good and valid reasons has directed for production of the documents by summoning of the witnesses under Section 311 of the Code of Criminal Procedure considering that it was essential to enable him to give just decision of the case. Simply because the provision has been resorted to at a later stage, it cannot be said that its purpose is to fill up the lacuna. No case is made out to invoke the inherent powers of this Court under Section 482 of the Code of Criminal Procedure to interfere with the discretionary order of the trial court based on good and valid reasons.

4. The petition under Section 482 of the Code of Criminal Procedure stands dismissed.

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