

Abdul Rehman Vs. State

Abdul Rehman Vs. State

SooperKanoon Citation : sooperkanoon.com/920461

Court : Rajasthan

Decided On : Jul-01-2011

Judge : Mahesh Bhagwati, J.

Acts : Code Of Criminal Procedure (CRPC) - Section 311, 482; Evidence Act - Section 165

Appeal No. : Case No. CRLMP 368 of 2006

Appellant : Abdul Rehman

Respondent : State

Advocate for Def. : Mr. G.S. Fauzdar, Adv

Advocate for Pet/Ap. : Mr. Mukesh Saini, Adv.

Judgement :

1. Challenge in this Criminal Misc. Petition is to the order dated 9th January, 2006 passed by Special Judge, SC/ST (Prevention of Atrocities) Cases, Sawai Madhopur whereby the revision petition filed by the petitioner has been dismissed and the order dated 10th November, 2005 passed by Judicial Magistrate, First Class, Sawai Madhopur, allowing the application under Section 311 of Cr PC and summoning Babu Lal S/o Kajod as a witness, has been affirmed.

2. Having heard the learned counsel for the parties and carefully perused the relevant material on record including the impugned orders, it is noticed that on account of death of PW-5 Smt. Nanni Begum, the complainant filed an application under Section 311 of Cr PC imploring the court to summon witness Babu Lal to prove certain documents as PW-5 Smt. Nanni Begum had expired. The learned trial court allowed the application and ordered to summon the witness Babu Lal in place of Nanni Begum.

3. A perusal of Section 311 makes it clear that under Section 311 Cr PC, power has been given to the Court to examine, or re-examine any person as a witness, if that Court considers it necessary to do so for the just decision of the case. If this Section is read with Section 165 of Evidence Act, it would be clear that the power under Section 311 of the Criminal Procedure Code and Section 165 of the Evidence Act is conferred on the Court and not on the parties and, therefore, it is the Court alone which can exercise the powers under section 311 of the Cr PC if the Court is of the opinion that it is necessary to do so for the just decision of the case. The examination and re-examination which is contemplated by Section 311 of the Cr PC and Section 165 of the Evidence Act is to be made by the Court and not by the parties. Viewed in this light, if the power under Section 311 of the Cr PC, 1973 is used by the Court for the purpose of enabling any party to examine or re-examine the witness, it would be impermissible to do so. Of course, the Court has unfettered powers to examine and re-examine any witness under Section 311 of the Cr PC at any time in any inquiry or trial.

4. So far as the question of summoning any other witness is concerned, that power is required to be exercised under Section 311 of Cr PC by the Court itself, but the witness cannot be summoned under Section 311 of Cr PC at the request of any of the parties.

5. In view of the above back-drop, the learned trial court and the learned revisional court are found to have committed material illegality at the time of passing the impugned orders. Hence the impugned orders passed by the learned courts below deserve to be set-aside and the criminal misc. petition filed by the petitioner needs to be allowed.

6. For the reasons stated above, the Criminal Misc. Petition filed by the petitioner under Section 482 of Cr PC stands allowed and the impugned orders passed by the learned courts below stand set-aside.

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