

every date and it was further directed that the witnesses of prosecution shall remain present before the trial court on each date fixed. He submits that this was unwarranted in a case in which the Section 313 Cr.P.C. explanation was already made and due to that the petitioner has been prejudiced.

4. Learned counsel appearing for the State and learned counsel appearing for the opposite party No.2 jointly opposed the prayer on the ground that there is no illegality in the order and the learned court to find out the truth in a criminal case has rightly passed such order.

5. The Court is required to proceed in a criminal case to discover the truth. Section 311 Cr.P.C. is one of many such provisions which strengthens the arms of the Court in its efforts to unearth the truth by procedural sanction by law. At the same time, the discretionary power vested under Section 311 Cr.P.C. has to be exercised judiciously for strong and valid reason and with caution and circumspection to meet the ends of justice. Undisputedly, the facts of the present case are that certain manipulation has been made in view of that Sections 467 and 468 of the IPC are added. In the case of "**Rajendra Prasad versus Narcotics Cell through its Officer**" reported in (1999) 6 SCC 110 the Hon'ble Supreme Court in paragraph No.8 of the said judgment took note of the observation made in "**Mohanlal Shamji Sani versus Union of India**", AIR (1991) SC 1346 to the effect that while exercising power under Section 311 Cr.P.C. the Court shall not use such power for filling up the lacuna left by the prosecution. Paragraph No.8 of the said judgment is quoted below:

"8. Lacuna in the prosecution must be understood as the inherent weakness or a latent wedge in the matrix of the prosecution case. The advantage of it should normally go to the accused in the trial of the case, but an oversight in the management of the prosecution

cannot be treated as irreparable lacuna. No party in a trial can be foreclosed from correcting errors. 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. After all, function of the criminal court is administration of criminal justice and not to count errors committed by the parties or to find out and declare who among the parties performed better."

6. Thus, in the above case the Hon'ble Supreme Court has held that if proper evidence is not adduced and relevant matter was not brought on record due to any inadvertence, the Court should be magnanimous in permitting such steps to be rectified. This part of excerpts of the said judgment of Hon'ble Supreme Court itself indicates that Section 311 Cr.P.C. includes power for examining the witnesses as well as admitting the relevant materials which are not brought on record. The Court further finds that the learned revisional Court has directed to the trial court to conduct the trial on day-to-day basis and the witnesses were directed to remain present on each date of hearing.

7. In view of the above facts, reasons and analysis the Court finds that there is no illegality in the impugned order dated 07.06.2017 passed by learned Additional Sessions Judge-II, Deoghar in Criminal Revision No.126 of 2016 arising out of Deoghar (Kunda) P.S. Case No.200 of 2006 corresponding to G.R. Case No.562 of 2006 as such this petition is dismissed.

8. Interim order stands vacated.

(Sanjay Kumar Dwivedi, J.)

Sangam/

A.F.R.