

(2024) 01 KAR CK 0006

In the Karnataka High Court

Case No : Criminal Petition No. 13827 Of 2023 (482)

Anilkumar And Others

APPELLANT

Vs

State Of Karnataka By Mahadevapurar P S Represented By
Public Prosecutor, High Court Building, Bengaluru 560001

RESPONDENT

Date of Decision : 02-01-2024

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 311, 313, 482
Indian Penal Code, 1860 — Section 34, 409
Constitution Of India, 1949 — Article 21

Citation : (2024) 01 KAR CK 0006

Hon'ble Judges : K. Natarajan, J

Bench : Single Bench

Advocate : T Prakash, K.Nageshwarappa

Final Decision : Allowed

Judgement

K. Natarajan, J

1. This petition is filed by the petitioners - accused No.1 and 2 under Section 482 of Cr.P.C. for quashing the impugned order dated 11.12.2023 in CC No.1804/2016 by the III Addl. Chief Metropolitan Magistrate, Bengaluru for having rejected the application filed under Section 311 Cr.P.C. to recall PW1 and 2 for the purpose of further cross-examination.

2. Heard the learned counsel for petitioners and learned HCGP for respondent - State.

3. The case of the petitioners is that they are facing trial for the offences punishable under Sections 409 r/w Sec. 34 of IPC for criminal breach of trust. The petitioners submit that matter is at fag of the trial and it is posted to record statement of accused under Section 313 of Cr.P.C. It is the case of the petitioners that they have filed an application under Section 311 Cr.P.C. to recall PW1 and 2 for the purpose of further cross-examination, which came to be rejected. Hence,

they are before this Court.

4. Having heard the arguments of the learned counsel for petitioners and learned HCGP and on perusal of the entire material on record, of course, the evidence of PW1 and 2 has been produced before the Court, where learned counsel for accused cross-examined the witnesses. However, some of the important points said to be left out or omitted by the earlier counsel. Giving an opportunity for the purpose of further cross-examination, of course, it is a discretionary power of the trial Court, a fair trial guaranteed under Article 21 of the Constitution of India, cannot be denied, merely because the matter is at the fag end of the trial. Therefore, giving one more opportunity for the purpose of further cross-examination will not prejudice the case of the prosecution. Hence, I am of the view that the petitioners are entitled for recalling the PW1 and 2 for the purpose of further cross-examination. Accordingly, the following order:

ORDER

(i) The petition is allowed.;

(ii) The impugned order dated 11.12.2023 in CC No.1804/2016 by the III Addl. Chief Metropolitan Magistrate, Bengaluru for having rejected the application filed under Section 311 Cr.P.C. to recall PW1 and 2 for the purpose of further cross-examination, is hereby set aside.;

(iii) Application filed by the petitioners - accused Nos.1 and 2 under Section 311 Cr.P.C. to recall PW1 and 2 for the purpose of further cross-examination, is hereby allowed.;

(iv) Petitioners - accused Nos.1 and 2 are hereby permitted to further cross-examine PW1 and 2, subject to payment of costs of Rs.3,000/- by the Petitioners - accused Nos.1 and 2 to PW1.;

(v) Petitioners - accused Nos.1 and 2 shall not seek any further adjournment when the witnesses are present for the cross-examination. If any adjournment is sought, the trial Court may impose heavy costs on Petitioners - accused Nos.1 and 2.;

(vi) Intimate the trial Court telephonically.