

SC no. 8944/16
FIR no. 14/11: PS: Special Cell
State Vs. Sunil @ Sand & Ors.

28.07.2023.

Present: Sh.Mukul Kumar, Ld. Addl. PP for the State.
Accused persons namely Rajesh, Sunil @ Sand, Naeem, Ravinder @ Sardar and Akash Gupta @ Titoo are present on bail.
Accused Kamal Kishore @ Bunti is stated to have already expired and proceedings against him already abated vide order dated 08.02.2021.
Accused Bimila is stated to have already expired and proceedings against her already abated vide order dated 16.02.2017.
Sh. Deepak Sharma, Ld.counsel for all the accused persons except accused Akash @ Tittu.

Reply to the pending application under Section 311 Cr. PC moved on behalf of the State is filed on behalf of all the accused persons.
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Arguments on the application are heard.

An application under Section 311 Cr. PC for recalling of PW-4 HC Satish Kumar is moved by Addl. PP for the state. In this application it is submitted that while going through the case file at the stage of final arguments, it is revealed that PW-4 was lastly examined in the court on 20.03.2014 and his further examination in chief was deferred as CD was required to be played. That inadvertently thereafter HC Satish Kumar was never summoned for completing his deposition. It is prayed that PW-4 HC Satish Kumar may kindly be summoned to complete his deposition.

On the other hand present application is strongly opposed by Ld.counsel for the accused persons on the ground that the prosecution has

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fails to disclose any justifiable explanation for such an inordinate delay as the said examination in chief was recorded on 20.03.2014. It is stated that since 20.03.2014 till today 9 years have expired and 117 dates have taken place but the prosecution has miserably fails to take any steps to recall PW-4. It is stated that at the end of trial all of sudden the present application is moved by the prosecution. It is prayed that the application may kindly be dismissed with imposition of heavy cost.

Heard. Record perused.

The perusal of the record reveals that PW-4 HC Satish Kumar was examined on 20.03.2014 and as per the recorded evidence his further chief examination was deferred at the request of Ld. Addl. PP for the state that the CD was required to be played to confirm the authenticity of the transcript. However in the jimney order of the said date i.e. 20.03.2014 it was inadvertently mentioned that the PW-4 HC Satish Kumar is examined and discharged. It appears that PW-4 was not recalled for further examination due to wrong noting of the jimney order. It is no doubt true that there is inordinate delay on behalf of prosecution to move the present application, but at the same time it is the duty of the court to ensure that best evidence should reach to the court for just and effective decision of the case. The further examination of PW-4 HC Satish Kumar is necessary for the just and effective decision of the case as he is the material witness. Therefore, considering all the facts and circumstances, I am inclined to

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allow the present application. **The prosecution is allowed to recall PW-4 HC Satish Kumar for concluding his examination in chief and cross-examination. It is made clear that that the prosecution shall ensure the presence of the witness on the next date, without any further delay as it is one of the oldest matter of the court.**

Be put up for further examination of PW-4 HC Satish Kumar on 17.08.2023. PW-4 HC Satish Kumar be summoned through IO for next date. MHCM is also directed to produce the case property and CD on the next date. IO is also directed to remain present on the next date alongwith the device to play the CD recording.

**(Devender Kumar Jangala)
ASJ-05, New Delhi District
Patiala House Courts, New Delhi
28.07.2023**