

**HIGH COURT OF MADHYA PRADESH: BENCH AT INDORE**

**BEFORE HON.MR. JUSTICE ALOK VERMA, JUDGE**

**M.Cr.C. No.6358/2015**

**Atiq S/o Sahabuddin**

**Vs.**

**State of Madhya Pradesh**

**O R D E R**

**Post for 30.09.2015**

**(ALOK VERMA)  
JUDGE**

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Shri Virendra Sharma, learned counsel for the applicant.

Ms. Romesh Dave, learned counsel for the respondent/State.

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**O R D E R**

**( Passed on this 30th day of September, 2015 )**

This application under Section 482 Cr.P.C. is directed against the order passed by Special Judge, Ujjain in Criminal Case No.81/2012 dated 06.07.2015 by which, the learned Special Judge allowed the application under Section 311 Cr.P.C. for calling three witnesses R.K. Soni, Ashish and Radheshyam who were not examined by the prosecution, and therefore, statement was very important and similarly, the learned Special Judge also allowed application in respect of recalling of prosecution witnesses-Rahul and Mukesh who were earlier cross-examined and released.

As per the relevant facts in this case, the present applicant Atiq remained absconding and was arrested subsequently. After his arrest, he was

subjected to Test Identification Parade and also on his information under Section 27 of Evidence Act, a purse allegedly belonging to the deceased was recovered. The recovery memo was prepared by the prosecution witnesses-R.K. Soni and Ashish and Radheshyam were attesting witnesses of the recovered memo. Other two witnesses, who were ordered to be recalled by the impugned order were witnesses of memo of Test Identification Parade in respect of the present applicant. The present application is filed on the ground that it was known to the prosecution from very beginning that such witnesses were to be examined. The prosecution deliberately left these witnesses, and now, merely to delay the trial, the application is filed. The applicant is in jail since 26.08.2012 and further delay would cause him immense prejudice.

Section 311 Cr.P.C. is two limes. First part is directory and the second part is mandatory. The second part provides as under :-

**“and the court shall summon and examine or recall and re-examine any such person if his evidence appears to it to be essential to the just and proper decision of the case.”**

Applying provision of this directory part of the Section, in the present case, it is apparent that the present applicant remained absconding earlier. He was subsequently arrested and some additional

investigation was done after his arrest. Merely because the prosecution fails to produce the evidence, due to the lapse, which appears unintentional, on the part of the public prosecutor, it cannot be said that now calling of such witnesses would cause immense prejudice to the present applicant.

This is a case under Section 302 IPC, and therefore, looking to the seriousness of the case, the order passed by learned Special Judge appears to be just and proper and no illegality has been committed by the learned Special Judge.

In this view of the matter, this application under Section 482 Cr.P.C. has no merit, and this application is liable to be dismissed, and dismissed accordingly.

Certified copy, as per rules.

**(Alok Verma)**  
**Judge**

Chitranjan