

SL. No	Date	Office Notes, reports, orders or proceedings or directions and Registrar's order with Signatures	COURT'S OR JUDGES'S ORDERS
			C482 1913 of 2023 <u>Hon'ble Sharad Kumar Sharma, J.</u> Mr. B.S. Adhikari, Advocate, for the applicant. Mr. V.K. Gemini, Deputy A.G., for the State of Uttarakhand. In a proceeding of Special Sessions Trial No. 132 of 2022, State Vs. Yusuf, the applicant has filed an application on 14th September, 2023, under Section 311 of the Cr.P.C., for summoning PW3 and 5, to be cross examined. The said application has been rejected by the impugned order on 14th September, 2023, observing thereof, that so far as PW3 is concerned, the opportunity to cross examine PW3 was closed, as back as on 23rd July, 2022, and the application under Section 311 of the Cr.P.C. was preferred after more than one year, which has been rejected by the Court, on the ground, that it was nothing, but a measure adopted by the applicant to delay the proceedings, and the provision contained under Section 311 of the Cr.P.C., cannot be permitted to be misused merely on the ground, that the earlier counsel, who was representing the applicant, had not been able to appropriately cross examine PW3 and PW5 and place relevant questions. As far as the permission to be granted under Section 311 of the Cr.P.C., for cross examination, the matter was considered in one of the cases of the Hon'ble apex Court in the matter of State Vs. J. Seenivasagan as reported in (2021) 14 SCC 1, and in para 12 of the said judgment, the Hon'ble Apex Court has observed the necessity upto what extent permission under Section 311 of the Cr.P.C. could be granted. Para 12 of the said judgment is extracted hereunder :- <i>“12. In our view, having due regard to the nature and ambit of Section 311 of the CrPC, it was appropriate and proper that the applications filed</i>

			by the prosecution ought to have been allowed. Section 311 provides that any Court may, at any stage of any inquiry, trial or other proceedings under the CrPC, summon any person as a witness, or examine any person in attendance, though not summoned as a witness, or recall and re-examine any person already examined 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 decision of the case”. The true test, therefore, is whether it appears to the Court that the evidence of such person who is sought to be recalled is essential to the just decision of the case.” If para 12 is taken into consideration, the Court has taken a view that Section 311 of the Cr.P.C. could be granted to summon the witnesses, who are vital for the purposes of trial, and it cannot be adopted as a matter of recourse to summon the witness for their examination, if the opportunity has already been closed earlier. As far as PW5 in the instant case is concerned, since she was only the transcribe of the document, her cross examination would not be required by invoking the provisions contained under Section 311 of the Cr.P.C., because she would not be a very vital witness to be cross examined. Except for PW3, who is the mother of the victim, though this Court is not very much impressed by the argument extended by the learned counsel for the applicant, that she could not be examined because of the counsel’s mistake. The Counsel’s mistake cannot be taken as a weapon to be utilized for delaying the proceedings, otherwise it will be an unending process, where any new counsel, who is inducted by the parties, may take a stand that the earlier counsel has professionally derelicted in performance of his professional duties for examination. Though without accepting the ground taken by the learned counsel for the applicant, but in order to meet out the ends of justice, and particularly in the context of PW3 for cross examination, who is the prime witness, being the mother of the victim, the C-482 Application would
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			partly stand disposed of, so far it relates to the summoning of PW3 to be cross examined by the Court. However, as far as the summoning of PW5 is concerned, the same would stand rejected. The Summoning of PW3, is being permitted by this Court subject to the following conditions :- i. That the learned Sessions Court would ensure to call upon PW3 on the next date fixed, or be fixed, and the applicant would ensure to cross examine her on the next date fixed. ii. If the applicant does not avail the said opportunity, as granted by today's order, there would be an automatic closure of her opportunity to re-examine PW3 any more. iii. The said permission is being granted in the wider interest to enable the applicant to have an effective trial. But the said permission since is now being availed by the applicant after more than one year, he is permitted to be examine PW3 on payment of costs of Rs.20,000/- to be deposited before the District Legal Services Authority. The deposit to be made, and upon the placement of proof of deposit, the aforesaid permission would stand granted to the applicant for examining PW3 only. Subject to the aforesaid, the C-482 Application stands disposed of. (Sharad Kumar Sharma, J.) Dated 17.10.2023 Shiv
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