

**HIGH COURT OF TRIPURA
AGARTALA
Crl. Rev. P. No. 70 of 2025**

- 1. Sri Ranabir Das,**
S/o of late Ruhini Kumar Das,
Aged about 48 years, resident
of Industry Road, North Kumarghat,
P.S. Kumarghat, District- Unakoti, Tripura.
- 2. Sri Hrishikesh Deb,**
Son of Haribal Deb, aged about 50
years, resident of K N. Road, Kumarghat,
P.S. Kumarghat, District-Unakoti, Tripura.
- 3. Smt. Archana Malakar,**
D/o Late Kamal Chandra Malakar,
aged about 43 years, resident of Tongibari,
Lalchari Colony, P.S. Dharmanagar, District-North
Tripura, resently residing at Chand Tilla, C/o Rabindranath
Debnath, near Petrol Pump, Panisagar, District-North Tripura.

---- **Petitioner(s)**

Versus

The State of Tripura,
Crime Branch, Ministry of Home Affairs,
Government of Tripura.

---- **Respondent(s)**

For Petitioner(s)	:	Mr. Pijush Kanti Biswas, Sr. Adv. Mr. Suman Tripura, Adv.
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For Respondent(s)	:	Mr. Raju Datta, P.P.
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Whether fit for reporting	:	NO
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HON'BLE MR. JUSTICE BISWAJIT PALIT

Judgment & Order (Oral)

15.12.2025

This petition under Section 397 read with Section 401 corresponding to Section 442 read with Section 438 of BNSS is filed for setting aside the order dated 26.09.2025 passed by the Learned Additional Sessions Judge, Court No.5, West Tripura, Agartala in S.T. (Type-1) 03 of 2017.

2. Heard Learned Senior Counsel Mr. Pijush Kanti Biswas, assisted by Learned Counsel Mr. Suman Tripura, appearing on behalf of the petitioners and also heard Learned PP Mr. Raju Datta, appearing on behalf of the respondent-State.

3. At the time of hearing Learned Senior Counsel first of all drawn the attention of the court referring Annexure-2 i.e. the petition filed by the petitioner accused persons under Section 311 of Cr.P.C. before the Learned Trial Court for recalling of PW-1 and submitted that though due to mistake and oversight some questions could not be put to the PW-1 which are either contradictory and material improvement over the statement made in the FIR the said mistake was detected when the defense counsel was preparing for the cross-examination of the Investigation Officer.

4. Learned Senior Counsel further submitted that the said PW-1 is required to be re-called in this case to answer the following questions:-

i. Have you stated in the FIR that she (Chayanika Banik) was having an umbrella of pink colour and she was also having wrist watch (Sonata company), one pink coloured ladies handbag and she was also wearing one golden chain in her neck, golden ear rings and four finger rings?

ii. Have you stated in your FIR that from the very date of marriage, problem cropped up as the bride-groom parties were not satisfied about the hotel arrangements of followers of bride-groom who came in the marriage, after the marriage and on the following day, she went to her matrimonial home but since after marriage, on the issue of non satisfaction of hotel arrangement during marriage, she was mentally harassed in her matrimonial home; for about 2 and half months, she stayed at her matrimonial home at Kumarghat and thereafter, she sought shelter to me?

iii. Have you stated in the FIR that however before the incident in a couple of occasions, she again went back but again and again, she was mentally harassed by her husband in matrimonial home; even Ranabir refused to attend phone calls of Chayanika at different times while she was staying with me (you)?

iv. Have you stated in the FIR that ultimately Chayanika again came back to me (you) at Agartala, since then there was no communication of Chayanika with Ranabir; even he did not used to attend phone calls of Chayanika. Also, did you state in the FIR that during the period of her stay at matrimonial home, Ranabir did not bear the expenses of her including fooding and clothing?

v. Have you stated in the FIR that on 1.10.2015 i.e. on the day of Chayanika's missing, you searched her out in her school, tried to meet with the principal of the school but he was out of state and you met with wife of principal and discussed about Chayanika with her, I(you) also made contact with Ranabir over telephone and informed the fact of her missing to him and then Ranabir instructed me to make a missing diary at PS and he also asked me to go with passport sized photograph of Chayanika; he also instructed me to meet with Samaresh Das who helped me(you) to lodge a missing diary, accordingly, you went at East Agartala PS and met with Samaresh Das and he helped you to lodge missing diary and on searching of your house, you could not find any passport sized photograph of Chayanika and thereafter, you took her photograph from bank passbook and gave the same to Samaresh and the Samaresh made out another copy from that photograph?

vi. Have you stated in your FIR that in the evening night of 01.10.2015 and 02.10.2015 around 01:00 Hrs, Ranabir came from Kailasahar, on that night, he along with his driver stayed in your house, on the following morning he went out to Kailasahar along with his vehicle and driver with assurance that he would come back but he did not, while staying in your house, you repeatedly asked Ranabir to search out your daughter but he became angry?

vii. Have you stated in the FIR that since 2/3 months prior to her missing, Ranabir started repeated communication with you as well as your daughter, he often used to make phone calls to your daughter, often he used to meet with Chayanika beyond your knowledge?

viii. Have you stated in the FIR that Chayanaika also expressed to you that she was in doubt about the attitude of Ranabir as he was so angry in nature but during that period, Ranabir started behaving with her very soberly and for that, she was in doubt about his attitude?

ix. Have you stated in the FIR that he (Ranabir) also met you on that day (11th September, 2015) before leaving Kailasahar and Ranabir told you that he will stay at night at hospital and asked you and your sister Malabika to go back in the house, infact

at night you were waiting outside the room where she (Chayanika) was admitted and your sister Malabika was with Chayanika behind her bed?

x. Have you stated in the FIR that you asked him (Ranabir) as to whether he came on 11th September 2015 on Agartala but he denied?

xi. Have you stated in the FIR that after few days of her (Chayanika) missing, the school colleagues of Chayanika came in your house; Puja Banik told you that on the previous day of her missing when Chayanika was in the school, Ranabir several times contacted with her over mobile phone and there was a hot altercation between them on mobile phone?

xii. Have you stated in the FIR that one Litan Saha also met with you after her missing; Litan Saha is the father of one of her students, on the first day of his meeting with me after the incident he did not disclose anything but after few months, he again came in your house and told you that on the day of Chayanika's missing when he was proceeding towards the school with his daughter(Neha), then he saw that Chayanika was discussing with a boy in front of Ranjan Kuthir at Khudiram Bose Lane, Math Chowmuhani near your house and he also told that the said boy was tall figured and dark complexioned wearing jeans pant and t shirt, then you doubted that he must be Ranabir?

xiii. Have you stated in your FIR that one of your neighbour namely Sanjib Dasgupta also came in your house after missing of Chayanika and told that on the day of her missing, he saw Chayanika boarding in a vehicle by closing her umbrella?

xiv. Have you stated in your FIR that in the month of July, 2014 Chayanika was abused by her husband Ranabir as she went to collect one form for admission in M.Ed and then threatened her to chop her and you also came to know from Chayanika that twice after marriage, Ranabir tried to press her neck by Hand and on protest by Chayanika, he told that he is taking the measurement of her neck for preparing necklace?

5. Learned Senior Counsel also submitted that if the petitioner-accused persons are not allowed by this court to re-examine PW-1, by way of recalling, then the petitioner-accused persons will be seriously prejudiced. Learned Senior Counsel again submitted that the case was dragged for quite a long period. Initially, during the period of COVID the case could not be proceeded with. Even after COVID, during the last four years prosecution could not adduce any witness and considering the

materials on record and also for fair adjudication of the case, Learned Senior Counsel urged for allowing the prayer of the petitioner-accused persons which was disallowed by the Learned Trial Court by order dated 26.09.2025.

6. In support of his contention Learned Senior Counsel relied upon one citation of the Hon'ble Supreme Court reported in ***AIR 2022 SC 3707 [titled as State of Madhya Pradesh & Ors.]***, wherein in para No.32,40,42 and 44 Hon'ble the Apex Court has observed as under:-

32. The power of the court is not constrained by the closure of evidence. Therefore, it is amply clear from the above discussion that the broad powers under Section 311 are to be governed by the requirement of justice. The power must be exercised wherever the court finds that any evidence is essential for the just decision of the case. The statutory provision goes to emphasise that the court is not a hapless bystander in the derailment of justice. Quite to the contrary, the court has a vital role to discharge in ensuring that the cause of discovering truth as an aid in the realization of justice is manifest.

40. The right of the accused to a fair trial is constitutionally protected under Article 21. However, in Mina Lalita Barua (supra), while reiterating Rajendra Prasad (supra), the Court observed that it is the duty of the criminal court to allow the prosecution to correct an error in interest of justice. In Rajendra Prasad (supra), the Court had held that:

"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."

In the present case, the importance of the decoding registers was raised in the examination of PW-41. Accordingly, the decoding registers merely being additional documents required to be able to appreciate the existing evidence in form of the call details which are already on record but use codes to signify the location of accused, a crucial detail, which can be decoded only through the decoding registers, the right of the accused to a fair trial is not prejudiced. The production of the decoding registers fits into the requirement of being relevant material which was not brought on record due to inadvertence.

42. The Court is vested with a broad and wholesome power, in terms of Section 311 - of the CrPC, to summon and examine or re-call and re-examine any material witness at any stage and the closing of prosecution evidence is not an absolute bar. This Court in *Zahira Habibulla H. Sheikh (supra)* while dealing with the prayers for adducing additional evidence under Section 391 CrPC at the appellate stage, along with a prayer for examination of witnesses under Section 311 CrPC explained the role of the court, in the following terms:

"43. The courts have to take a participatory role in a trial. They are not expected to be tape recorders to record whatever is being stated by the witnesses. Section 311 of the Code and Section 165 of the Evidence Act confer vast and wide powers on presiding officers of court to elicit all necessary materials by playing an active role in the evidence collecting process. They have to monitor the proceedings in aid of justice in a manner that something, which is not relevant, is not unnecessarily brought into record. Even if the prosecutor is remiss in some ways, it can control the proceedings effectively so that the ultimate objective i.e. truth is arrived at. This becomes more necessary where the court has reasons to believe that the prosecuting agency or the prosecutor is not acting in the requisite manner. The court cannot afford to be wishfully or pretend to be bliss-fully ignorant or oblivious to such serious pitfalls or dereliction of duty on the part of the prosecuting agency. The prosecutor who does not act fairly and acts more like a counsel for the defence is a liability to the fair judicial system, and courts could not also play into the hands of such prosecuting agency showing indifference or adopting an attitude of total aloofness."

(emphasis supplied)

Further, in *Zahira Habibullah Sheikh (5) (supra)*, the Court reiterated the extent of powers under Section 311 and held that:

"27. The object underlying Section 311 of the Code is that there may not be failure of justice on account of mistake of either party in bringing the valuable evidence on record or

leaving ambiguity in the statements of the witnesses examined from either side. The determinative factor is whether it is essential to the just decision of the case. The section is not limited only for the benefit of the accused, and it will not be an improper exercise of the powers of the court to summon a witness under the section merely because the evidence supports the case of the prosecution and not that of the accused. The section is a general section which applies to all proceedings, enquiries and trials under the Code and empowers the Magistrate to issue summons to any witness at any stage of such proceedings, trial or enquiry. In Section 311 the significant expression that occurs is "at any stage of any inquiry or trial or other proceeding under this Code". It is, however, to be borne in mind that whereas the section confers a very wide power on the court on summoning witnesses, the discretion conferred is to be exercised judiciously, as the wider the power the greater is the necessity for application of judicial mind."

(emphasis supplied)

44. For the above reasons, we have come to the conclusion that the decision of the High Court which is impugned in the appeal is unsustainable. We accordingly allow the appeal and set aside the impugned judgment and order of the High Court dated 8th April 2022 in Misc. Criminal Case No. 57152 of 2021 as well as the order of the Second Additional Session Judge, Dr. Ambedkar Nagar, District Indore dated 13th November 2021 in Sessions Trial 227 of 2016 dismissing the application filed by the prosecution. The application filed by the prosecution for the production of the decoding registers and for the summoning of the witnesses of the cellular companies for that purpose is allowed. The Second Additional Sessions Judge, Dr. Ambedkar Nagar, District Indore is directed to conclude Sessions Trial No. 227 of 2016 by 31st October 2022.

MA No. 1144 of 2022 in SLP (Crl.) No. 2239 of 2022"

Referring the aforesaid decision of the Hon'ble Supreme Court learned Senior Counsel submitted that in view of the observation made by the Hon'ble Supreme Court there is scope for allowing the prayer of the accused petitioners and asked for setting aside the order dated 26.09.2025 passed by Additional Sessions Judge, Court No.5, West Tripura, Agartala dismissing

the application filed on behalf of the accused persons under Section 311 of Cr.P.C.

7. Reliance was placed on another judgment of the Hon'ble Supreme Court of India reported in ***AIR 2013 SC 3081 [titled as Rajaram Prasad Yadav vs. State of Bihar & Anr.]***, where in Para No.23 Hon'ble the Apex Court observed as under:

"23. From a conspectus consideration of the above decisions, while dealing with an application under Section 311 Cr.P.C. read along with Section 138 of the Evidence Act, we feel the following principles will have to be borne in mind by the Courts:

a) Whether the Court is right in thinking that the new evidence is needed by it? Whether the evidence sought to be led in under Section 311 is noted by the Court for a just decision of a case?

b) The exercise of the widest discretionary power under Section 311, Cr.P.C. should ensure that the judgment should not be rendered on inchoate, inconclusive speculative presentation of facts, as thereby the ends of justice would be defeated.

c) If evidence of any witness appears to the Court to be essential to the just decision of the case, it is the power of the Court to summon and examine or recall and re-examine any such person.

d) The exercise of power under Section 311, Cr.P.C. should be resorted to only with the object of finding out the truth or obtaining proper proof for such facts, which will lead to a just and correct decision of the case.

e) The exercise of the said power can-not be dubbed as filling in a lacuna in a Prosecution case, unless the facts and circumstances of the case make it apparent that the exercise of power by the Court would result in causing serious prejudice to the accused, resulting in miscarriage of justice.

f) The wide discretionary power should be exercised judiciously and not arbitrarily.

g) The Court must satisfy itself that it was in every respect essential to examine such a witness or to recall him for further examination in order to arrive at a just decision of the case.

h) The object of Section 311, Cr.P.C. simultaneously imposes a duty on the Court to determine the truth and to render a just decision.

i) The Court arrives at the conclusion that additional evidence is necessary, not because it would be impossible to pronounce the judgment without it, but because there would be a failure of justice without such evidence being considered.

j) Exigency of the situation, fair play and good sense should be the safeguard, while exercising the discretion. The Court should bear in mind that no party in a trial can be foreclosed from correcting errors and that 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.

k) The Court should be conscious of the position that after all the trial is basically for the prisoners and the Court should afford an opportunity to them in the fairest manner possible. In that parity of reasoning, it would be safe to err in favour of the accused getting an opportunity rather than protecting the prosecution against possible prejudice at the cost of the accused. The Court should bear in mind that improper or capricious exercise of such a discretionary power, may lead to undesirable results.

l) The additional evidence must not be received as a disguise or to change the nature of the case against any of the party.

m) The power must be exercised keeping in mind that the evidence that is likely to be tendered, would be germane to the issue involved and also ensure that an opportunity of rebuttal is given to the other party.

n) The power under Section 311, Cr.P.C. must therefore, be invoked by the Court only in order to meet the ends of justice for strong and valid reasons and the same must be exercised with care, caution and circumspection. The Court should bear in mind that fair trial entails the interest of the accused, the victim and the society and, therefore, the grant of fair and proper opportunities to the persons concerned, must be ensured being a constitutional goal, as well as a human right."

Referring clause No. j & k of Para No.23 Learned Senior Counsel submitted that the present matter is squarely covered by the said clause j & k of Para 23 of the judgment of the Hon'ble Supreme Court and urged for allowing the prayer of the petitioner accused persons.

8. On the other hand, Learned PP appearing on behalf of the State-respondent countered the submission made by the

Learned Senior Counsel and submitted that the prosecution has filed an objection against the application filed by the present petitioner-accused persons wherein it was specifically stated that in this case up to the present stage 70 Nos. of witnesses have been examined and cross-examined and the first witness namely, Dipika Banik was examined on 21.07.2017 and thereafter, on 10.11.2017 she was cross examined by the petitioner-accused persons and all the contradiction, omission and attention was duly recorded by the Learned Trial Court on the basis of submission of the defense counsel and thereafter, the witness was discharged. Presently, the said witness is now aged about 76 years, so at this belated stage, there is no scope to entertain the petition filed by the petitioner-accused persons.

9. In support of his contention, Learned PP Mr. Saha, relied upon one citation of the Hon'ble Supreme Court of India reported in **(2019) 14 SCC 328 [titled as Swapan Kumar Chatterjee vs. Central Bureau of Investigation]**, wherein in Para No. 11 & 12 Hon'ble the Apex Court observed as under:

"11. It is well settled that the power conferred under Section 311 should be invoked by the court only to meet the ends of justice. The power is to be exercised only for strong and valid reasons and it should be exercised with great caution and circumspection. The court has vide power under this section to even recall witnesses for re-examination or further examination, necessary in the interest of justice, but the same has to be exercised after taking into consideration the facts and circumstances of each case. The power under this provision shall not be exercised if the court is of the view that the application has been filed as an abuse of the process of law.

12. Where the prosecution evidence has been closed long back and the reasons for non-examination of the witness earlier are not satisfactory, the summoning of the witness at

belated stage would cause great prejudice to the accused and should not be allowed. Similarly, the court should not encourage the filing of successive applications for recall of a witness under this provision."

Referring the same Learned PP submitted that although it is the settled position of law that under Section 311 of Cr.P.C. the power is given to the Court to meet the ends of justice but that power should be exercised only for strong and valid reasons and it should be exercised with great caution and circumspection. In this case, the present petitioner-accused persons after recording of 70 witnesses and also after elapsing of almost seven and half years, has filed this petition just to fill up the lacuna of defense, which at this belated stage, cannot be considered for the sake of justice and urged for dismissal of the application filed by the petitioner-accused persons.

10. He also relied upon one citation of a co-ordinate Bench of this High Court (**Order dated 14.05.2025 in Crl. Rev. Pet. No. 13/2025 and also Order dated 28.02.2025 in Crl. Rev. Pet. No. 11/2025**) wherein this Court dismissed/rejected the application filed by the petitioners for recalling witness under Section 311 of Cr.P.C and finally Learned PP asked for dismissal of this petition filed by the present petitioner-accused persons.

11. I have heard both the sides at length and perused the record of the learned Trial Court. It appears to this Court that in this case 70 Nos. of witnesses have already been examined by the prosecution and the case is awaiting for cross examination of the IO i.e. Inspector Ranabir Bhattacharjee (PW-70).

12. Now for the sake of convenience, I would like to refer herein below the relevant provision of Section 311 of Cr.P.C., which provides as under:

Section 311 in The Code of Criminal Procedure, 1973

311. Power to summon material witness, or examine person present.

- Any Court may, at any stage of any inquiry, trial or other proceeding under this Code, 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.

From the aforesaid provisions of law it appears that there is scope for recalling of any witness at any stage of the proceeding. Here in the case at hand PW-1 was examined in Chief by the prosecution on 21.07.2017 and after that her examination was done on 10.11.2017 by the present petitioner accused persons. After recording evidence of the said PW-1 till cross-examination of the PW-70 i.e. the IO, no such prayer was made by the present petitioner accused persons before the Learned Trial Court.

13. According to Learned Senior Counsel, the mistake has been noticed when the defense Counsel was preparing for cross-examination of the IO which was not intentional. This ground projected by the petitioners does not inspire confidence of this Court to invoke jurisdiction under Section 311 of Cr.P.C. at this belated stage.

14. So, after hearing rival submissions of both the parties and also on perusal of the materials on record, this Court, at this stage, does not find any error warranting interference of the order dated 26.09.2025 delivered by the Learned Trial Court as because the said PW-1 was duly examined and cross-examined by the present petitioner accused persons. So after a prolonged period when the evidence of almost all the witnesses of the prosecution have been recorded at this belated stage there is no scope to consider the prayer of the present petitioner accused persons. Rather it appears to this Court that the petitioner accused persons by way of invoking Section 300 of Cr.P.C. are intending to fill up the lacuna of the defense case.

15. So in the considered opinion of this Court the Learned Trial Court rightly rejected the application filed by the present petitioner-accused persons after elaborate discussions. The citations referred by the Learned Senior Counsel in course of hearing does not help this Court at this belated stage to apply in this present case rather the citation referred by Learned PP, as aforesaid, appears to be more justified and relevant for decision of this case.

16. Furthermore, the power of discretion is to be exercised very cautiously and very judiciously for some valid reasons and circumspection to meet the ends of justice. In the case at hand, the petiitoners thoroughly cross examined the PW-1 on 10.11.2017. Now after recording all the evidence of the

witnesses of the prosecution, the plea taken by the petitioner-accused persons that due to some mistake they could not put the questions to the PW-1 for cross examination, as mentioned above, cannot be accepted as a valid and justified grounds. As such, in the considered opinion of this Court, the impugned order passed by the Learned Trial Court does not suffer from any such error calling for interference by this Court, at this stage.

17. Accordingly, the petition filed by the petitioner-accused persons stands dismissed/rejected.

18. From the record it appears that the case is pending for cross-examination of PW-70 i.e. the IO and this is an old pending case. So considering the facts and circumstances of the case, it is directed that the Learned Trial Court shall make all endeavour to dispose of the case not later than **30.06.2026**.

19. With these observations, the present revision petition stands disposed of.

Send down the records to the Learned Trial Court along with s copy of this order.

Pending applications, if any, also stands disposed of.

JUDGE

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