

Court No. - 52**Case :-** APPLICATION U/S 528 BNSS No. - 7001 of 2025**Applicant :-** Manoj Kumar Sharma And Another**Opposite Party :-** State of U.P. and Another**Counsel for Applicant :-** Shikhar Tandon**Counsel for Opposite Party :-** G.A.**Hon'ble Mrs. Manju Rani Chauhan,J.**

1. Heard Mr. Shikhar Tandon, learned counsel for the applicants and Mr Satendra Tiwari, learned counsel for the State and perused the record.

2. The present application has been filed challenging the order dated 03.02.2025 vide which application u/s 311 Cr.P.C. moved by the applicants has been rejected.

3. Learned counsel for the applicants submits there are certain questions to be put to PW-2 Prempal (father of deceased) for examination, which are relevant for proper adjudication of the matter. When PW-2 was examined, he stated that his daughter Beena was harassed after few days of marriage for non fulfilment of additional dowry demand but it has not been specified as to what dowry demand was raised. PW-2 has stated about his daughter communicating to him that the alleged accused persons taunted and passed remarks and used to torture her for dowry but has not told as to what remarks were passed and who all have harassed her for the said purpose. PW-2 during his examination had stated that Vikas his wife Rachna and brother Ram Kumar had gone to in-laws' house of Beena but nothing has been stated about the fact as to how he came to know about their visit by telephone, message or from the family members. It has also not been stated as to who all were present and how they reached the place of incident. The main question which would have to be raised for proper adjudication of the matter is that PW-2 has stated about marks of injury on stomach

and hips of his daughter but has not stated as to number of marks on the said parts. Though the illicit relation of husband was shared by the deceased, for which she was being assaulted and tortured, how and when the aforesaid fact was shared by daughter of PW-2 has not been specified. Manoj and Beena (deceased), daughter of PW-2 went on the *Terahvi* of elder brother of PW-2 but the date of *Terahvi* has not been specified. There are other questions which have been detailed in the application as moved by the applicants u/s 311 Cr.P.C. on 15.07.2024.

4. The Court concerned without considering the fact that recall of PW-2 for putting the aforesaid questions are necessary for proper adjudication of the matter, has rejected the application on 03.02.2025 moved by the applicants. In support of his submission he has relied upon paragraph-23 of the judgement in the case of **Rajaram Prasad Yadav Vs. State of Bihar & Ors., AIR 2013 SC 3081.**

“23. From the conspectus consideration of the above decisions, while dealing with an application under Section 311 Code of Criminal procedure 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 CrPC should ensure that the judgment should not be rendered on inchoate, inconclusive and 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 CrPC 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 cannot 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

(h) The object of Section 311 CrPC 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 CrPC 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.”

5. Therefore, the aforesaid order dated 03.02.2025 may be set aside and an opportunity to recall PW-2 may be given on one date.

6. Learned A.G.A. on the other hand submits that there is no illegality and infirmity in the order dated 03.02.2025 as PW-2 has already been examined from 09.10.2023 till 09.12.2023 and the present application is moved after passage of nearly one year to delay the trial. He further submits that PW-2 was examined on 09.10.2023 whereafter he was cross-examined on 04.12.2023. Applicants had ample time to put specific questions to PW-2 but they did not do so. The aforesaid

questions as mentioned in the application as moved by the applicants for recalling the PW-2 is nothing but a way to manage PW-2, thus, recalling of PW-2 cannot be permitted at this stage. He further submits that seven witnesses have already been examined after examination of PW-2. He further points out that PW-4 and PW-5 have turned hostile and therefore, permission for recalling of PW-2 at this stage would frustrate the purpose of Section 311 Cr.P.C. Learned AGA next submits that in the application though questions have been mentioned but the reason for not putting the questions to PW-2 at the time of his examination has not been disclosed, which also goes to show that application has been moved only to delay the trial.

7. I have considered the submissions made by the learned counsel for the parties and gone through the records of the present application.

8. Before fathoming correctness of the submissions made by the learned counsel for the parties, it will be worthwhile to refer to Section 311 Cr.P.C., which reads as under:-

"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 reexamine any such person if his evidence appears to it to be essential to the just decision of the case."

9. Assiduous scrutiny of aforesaid provision clearly suggests that court enjoys vast power to summon any person as a witness or recall and re-examine a witness, provided, same is essentially required for just decision of the case. Moreover, such exercise of power can be at any stage of inquiry, trial or proceedings under the Code, meaning thereby, applicant can file an application at any time before conclusion of trial. The very objective of Section 311 Cr.P.C. is to bring on record evidence not only from the point of view of accused and prosecution, but also from the point of view of the orderly society.

10. The scope and object of the provision is to enable the Court to determine the truth and to render a just decision after discovering all relevant facts and obtaining proper proof of such facts, to arrive at a just decision of the case. Power must be exercised judiciously and not capriciously or arbitrarily, as any improper or capricious exercise of such power may lead to undesirable results. An application under Section 311 of Cr.P.C. must not be allowed only to fill up a lacuna in the case of the prosecution, or of the defence, or to the disadvantage of the accused, or to cause serious prejudice to the defence of the accused, or to give an unfair advantage to the opposite party. Further, the additional evidence must not be received as a disguise for retrial, or to change the nature of the case against either of the parties. Such a power must be exercised, provided that the evidence that is likely to be tendered by a witness, is germane to the issue involved. An opportunity of rebuttal however, must be given to the other party. The power conferred 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 great caution and circumspection. The very use of words such as 'any Court', 'at any stage', or 'or any enquiry, trial or other proceedings', 'any person' and 'any such person' clearly spells out that the provisions of this section have been expressed in the widest possible terms, and do not limit the discretion of the Court in any way. There is thus no escape if the fresh evidence to be obtained is essential to the just decision of the case. The determinative factor should therefore be, whether the summoning/recalling of the said witness is in fact, essential to the just decision of the case.

11. Close scrutiny of aforesaid provision of law further suggests that Section 311 has two parts; first part reserves a right to the parties to move an appropriate application for re-examination of a witness at any stage; but definitely the second part is mandatory that casts a duty upon

court to re-examine or recall or summon a witness at any stage if his/her evidence appears to be essential for just decision of case because, definitely the underlying object of aforesaid provision of law is to ensure that there is no failure of justice on account of mistake on the part of either of parties in bringing valuable piece of evidence or leaving an ambiguity in the statements of witnesses examined from either side.

12. In this backdrop, it would be useful to make a reference to certain decisions rendered by the Supreme Court on the interpretation of Section 311 of the Code, wherein the Apex Court highlighted the basic principles which are to be borne in mind while dealing with an application under Section 311 of the Code.

13. In **Natasa Singh v. C. B. I.**, reported in (2013) 5 SCC 741, the Apex Court, after referring the various decisions of the Supreme Court, has observed that the power conferred under Section 311 Cr.P.C. must therefore, be invoked by the court only in order to meet the ends of justice and such power should be exercised with great caution and circumspection.

14. The scope of Section 311 Cr.P.C. has been dealt in the case of **Raja Ram Prasad Yadav vs. State of Bihar and another**, reported in (2013)14 SCC 461, wherein the Apex Court has held that power under Section 311 Cr.P.C. to summon any person or witness or examine any person already examined can be exercised at any stage provided the same is required for just decision of the case.

15. In this context, I also wish to make a reference to the judgment of the Apex Court in **Mannan SK and others vs. State of West Bengal and another**, reported in AIR 2014 SC 2950, wherein the the Apex Court Court has held as under:-

"10. The aim of every court is to discover truth. Section 311 of the Code is one of many such provisions of the Code which strengthen the

arms of a court in its effort to ferret out the truth by procedure sanctioned by law. It is couched in very wide terms. It empowers the court at any stage of any inquiry, trial or other proceedings under the Code to summon any person as a witness or examine any person in attendance, though not summoned as witness or recall and re-examine already examined witness. The second part of the Section uses the word 'shall'. It says that the court shall summon and examine or recall or re-examine any such person if his evidence appears to it to be essential to the just decision of the case. The words 'essential to the just decision of the case' are the key words. The court must form an opinion that for the just decision of the case recall or reexamination of the witness is necessary. Since the power is wide its exercise has to be done with circumspection. It is trite that wider the power greater is the responsibility on the courts which exercise it. The exercise of this power cannot be untrammelled and arbitrary but must be only guided by the object of arriving at a just decision of the case. It should not cause prejudice to the accused. It should not permit the prosecution to fill-up the lacuna. Whether recall of a witness is for filling-up of a lacuna or it is for just decision of a case depends on facts and circumstances of each case. In all cases it is likely to be argued that the prosecution is trying to fill-up a lacuna because the line of demarcation is thin. It is for the court to consider all the circumstances and decide whether the prayer for recall is genuine."

16. Further in the case of **V.N. Patil vs. K. Niranjan Kumar and Ors., reported in (2021) 3 SCC 661**, wherein the Apex Court has held that the aim of every Court is to discover the truth. Section 311 Cr.P.C. is one of many such provisions which strengthen the arms of a court in its effort to unearth the truth by procedure sanctioned by law. At the same time, the discretionary power vested under Section 311 Cr.P.C. has to be exercised judiciously for strong and valid reasons and with caution and circumspection to meet the ends of justice.

17. The principles related to the exercise of the power under Section 311 Cr.P.C. have been well settled by this Court in **Vijay Kumar vs. State of Uttar Pradesh and Another, reported in 2011 (8) SCC 136.-**

18. This principle has been further reiterated in **Mannan Shaikh and Others vs. State of West Bengal and Another**, reported in 2014 (13) SCC 59 and thereafter in the case of **Ratanlal vs. Prahlad Jat and**

Others, 2017 (9) SCC 340 and Swapan Kumar Chatterjee vs. Central Bureau of Investigation, 2019 (14) SCC 328.

19. In the case of **State (NCT of Delhi) vs. Shiv Kumar Yadav (2016) 2 SCC 402**, the Apex Court has observed that recall of a witness under Section 311 must be bona fide and genuine. Secondly, applications for recall of a witness under Section 311 should not be allowed as a matter of course and the discretion given to the Court must be exercised judiciously, not arbitrarily.

20. The Apex Court in the case of **Manju Devi v. State of Rajasthan, reported in (2019) 6 SCC 203** emphasized that Section 311 of the CrPC grants courts broad discretionary power to summon, recall, or re-examine witnesses at any stage of proceedings to ensure a just decision. However, this power must be exercised judiciously, not arbitrarily. The provision aims to uncover the truth and ensure that all relevant facts are brought on record without causing prejudice to any party. It should not be used to fill gaps in a party's case, give unfair advantage. The determining factor for invoking Section 311 is whether the testimony is essential for a fair and just decision, ensuring that the other party is given an opportunity to respond. The court may even exercise this power suo moto if necessary, but it must do so cautiously and only when justified by strong and valid reasons.

21. Aforesaid exposition of law clearly suggests that a fair trial is main object of criminal jurisprudence and it is duty of court to ensure such fairness is not hampered or threatened in any manner. It has been further held in the aforesaid judgments that fair trial entails interests of accused, victim and society and therefore, grant of fair and proper opportunities to the persons concerned, must be ensured being a constitutional goal, as well as a human right. The Apex Court has categorically held in the aforesaid judgment that adducing evidence in

support of the defence is a valuable right and denial of such right would amount to denial of a fair trial.

22. The Apex Court, while culling out certain principles required to be borne in mind by the courts while considering applications under Section 311, has held that exercise of widest discretionary powers under Section 311 should ensure that judgment should not be rendered on inchoate, inconclusive and speculative presentation of facts. Hon'ble Apex Court has further held that if evidence of any witness appears to be essential for the just decision of the case, it is the duty of the court to summon and examine or recall and re-examine any such person because very object of exercising power under Section 311 Cr.P.C. is to find out truth and render a just decision. Most importantly, in the aforesaid judgments referred to herein above, the Apex Court has held that court should bear in mind that no party in 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.

23. The fairness of trial has to be seen not only from the point of view of the victim, but also from the point of view of the accused and the society. It is not possible to lay down precise situations when such power can be exercised. The Legislature in its wisdom has left the power undefined. Thus, the scope of power under Section 311 Cr.P.C. has to be considered from case to case.

24. The accused cannot have the witness recalled for re-examination as a matter of right and extraordinary provision cannot be used as an afterthought to fill the gaps.

25. Considering the materials brought on record and keeping the principles laid down by the Hon'ble Supreme Court for exercise of power under section 311 Cr.P.C., this Court is of the opinion that

observations and findings recorded by the trial Court in rejecting the application under Section 311 Cr.P.C. of the applicants under the facts and circumstances of the case are fully sustainable. The trial Court has committed no illegality or infirmity in the order impugned by rejecting the application of the applicants. There appears to be no abuse of the process of the Court also. There is no evidence on record to satisfy this Court that trial would be seriously prejudiced if the said witnesses is not recalled for re-examination or further examination.

26. In view of the above, the application of the applicants having no merit deserves to be rejected. In the result, the application is **rejected**.

27. The office is directed to communicate this order to the court concerned to proceed with the case in accordance with law.

Order Date :- 4.3.2025

Rahul.