

Court No. - 75

Case :- APPLICATION U/S 528 BNSS No. - 7911 of 2025

Applicant :- Shamshad

Opposite Party :- State Of U.P. And 2 Others

Counsel for Applicant :- Anil Kumar

Counsel for Opposite Party :- G.A.

Hon'ble Arun Kumar Singh Deshwal,J.

1. Sri Arnesh Bahadur Tiwari, Advocate has filed his Vakalatnama on behalf of opposite party nos. 2 and 3, which is taken on record.

2. Heard Sri Anil Kumar Shukla, learned counsel for the applicant, Sri Arnesh Bahadur Tiwari, learned counsel for the opposite party no. 2 and 3 and Ms. Harshita Rani, learned State Law Officer for the State.

3. The present 482 Cr.P.C. application has been filed to quash the impugned order dated 15.4.2024 passed by Additional Sessions Judge, court no. 7, Ghaziabad on the application under Section 311 Cr.P.C. in Session Trial No. 878 of 2021 (State vs. Shamshad and others), arising out of Case Crime No. 479 of 2021, under sections 498A, 323, 304B I.P.C. and section 34 Dowry Prohibition Act, P.S. Niwadi, District-Ghaziabad.

4. Facts giving rise to the controversy are that the daughter of opposite party no. 2 Naseem was married to applicant. She committed suicide on 27.09.2021, thereafter the first information report was lodged by the opposite party no. 2 Akhtar Ali against the applicant and his other family members. Police after investigation has submitted chargesheet against the applicant on 11.7.2022. During trial the opposite party no. 2 was examined as PW-1 on 11.7.2022, thereafter cross-examined on the same date as well as on 1.8.2022. Thereafter the son of opposite party no. 2 was examined as PW-2 on 26.9.2022 and thereafter cross-examined on the same date as well as on 27.9.2022. Thereafter, after conclusion of statement of PW-4 Chand on 3.4.2023 an application under section 311 Cr.P.C. was filed on 9.1.2024 by the applicant to re-examine PW1, PW-2 and PW-4 on the ground that PW-4 in his statement has mentioned about a person namely, Babloo, who was having extramarital affair with the deceased, therefore, re-examination of PW-1, PW-2 and PW-4 is necessary. The above application was rejected by the court below by order dated 15.4.2024 erroneously on the ground that the application was filed after a considerable delay and the main purpose of the applicant was to delay the trial proceedings.

5. It is submitted by learned counsel for the applicant that the delay is not material for re-examination of the witnesses under section 311 Cr.P.C., if the re-examination of the witnesses is essential for the just decision of the case and there was sufficient material that the deceased was having extramarital affair with one Babloo and when this fact came to the knowledge of the applicant then he objected this relationship, as a result of which the deceased Naseema has committed suicide. This fact came on record after re-examination of PW-1, PW-2 and PW-4.

6. Learned counsel for the opposite party no. 2 did not object to recall PW-1, PW-2 and PW-4 for re-examination. He also submits that he has no objection, if application under section 311 Cr.P.C. filed by the applicant is allowed. However, learned A.G.A. has vehemently opposed the aforesaid prayer and submitted that in the garb of re-examination, the witnesses already examined cannot be allowed to turn hostile just to demolish the prosecution case.

7. After having heard learned counsel for the parties and perused the record, this Court finds that it is not in dispute that the wife of the applicant has committed suicide and the reason for committing suicide is the basic fact for just decision of the case. Section 311 Cr.P.C. itself permits the the court to 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. Section 311 Cr.P.C. is being quoted hereunder :-

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

8. The question arises whether the delay could be a ground to reject the application under section 311 Cr.P.C., if otherwise the re-examination of witnesses is essential to the just decision of the case. The Apex court in the case of **Manju Devi vs. State of Rajasthan in Criminal Appeal No. 688 of 2019** as observed that the delay itself cannot be a decisive factor to decide the application under section 311 Cr.P.C. when the prayer for re-examination of the material witness was made.

9. The Apex Court in the case of **Varsha Garg vs. State of Madhya Pradesh 2022 LiveLaw (SC) 662** has observed that application under section 311 Cr.P.C. cannot be dismissed merely on the ground that it will lead to filling in the lacunae of the prosecution's case and the Court's determination of the application should only be based on the test of the essentiality of the evidence. It is also observed by the Apex Court that the Court is vested with a broad and wholesome power to summon and examine or recall and re-examine any material witness at any stage and the closing of prosecution evidence is not an absolute bar. The essential criteria of re-examination is necessary for just decision of the case. Paragraph 42 of the said

judgement is being quoted hereunder:-

"42 The Court is vested with a broad and wholesome power, in terms of [Section 311](#) of the CrPC, to summon and examine or recall and re-examine any material witness at any stage and the closing of prosecution evidence is not an absolute bar. "

Apex Court in the case of **Satbir Singh vs. State of Haryana and others SLP (CRL.) No. 1256 of 2022** again observed that a discretionary power like section 311 Cr.P.C. is to enable the Court to keep the record straight and to clear any ambiguity regarding the evidence, while also ensuring no prejudice is caused to anyone. Paragraph nos. 9 and 10 of the said judgement is being quoted hereunder:-

"9. Section 311 of the Code of Criminal Procedure, 1973 (hereinafter referred to as the "[CrPC](#)") has engaged this Court's attention before. We will advert to a few decisions of recent vintage. While overturning an order of the High Court allowing an application for recall of a witness, which was rejected by the trial Court, this Court held as under, in [Ratanlal v Prahlad Jat](#), (2017) 9 SCC 340:

"In order to enable the court to find out the truth and render a just decision, the salutary provisions of Section 311 are enacted whereunder any court by exercising its discretionary authority at any stage of inquiry, trial or other proceeding can summon any person as witness or examine any person in attendance though not summoned as a witness or recall or re-examine any person already examined who are expected to be able to throw light upon the matter in dispute. The object of the provision as a whole is to do justice not only from the point of view of the accused and the prosecution but also from the point of view of an orderly society. This power is to be exercised only for strong and valid reasons and it should be exercised with caution and circumspection. Recall is not a matter of course and the discretion given to the court has to be exercised judicially to prevent failure of justice. Therefore, the reasons for exercising this power should be spelt out in the order.

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".

18. In *Vijay Kumar v.State of U.P.*[*Vijay Kumar v.State of U.P.*, (2011) 8 SCC 136 :

(2011) 3 SCC (Cri) 371 : (2012) 1 SCC (L&S) 240], this Court while explaining scope and ambit of Section 311 has held as under: (SCC p. 141, para 17).

"17. Though Section 311 confers vast discretion upon the court and is expressed in the widest possible terms, the discretionary power under the said section can be invoked only for the ends of justice. Discretionary power should be exercised consistently with the provisions of [\[CrPC\]](#) and the principles of criminal law. The discretionary power conferred under Section 311 has to be exercised judicially for reasons stated by the court and not arbitrarily or capriciously."

19. In *Zahira Habibullah Sheikh (5) v. State of Gujarat* [*Zahira Habibullah Sheikh (5) v. State of Gujarat*, (2006) 3 SCC 374 : (2006) 2 SCC (Cri) 8], this Court has considered the concept underlying under Section 311 as under: (SCC p. 392, para 27) "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."

20. In *State (NCT of Delhi) v. Shiv Kumar Yadav* [*State (NCT of Delhi) v. Shiv Kumar Yadav*, (2016) 2 SCC 402 : (2016) 1 SCC (Cri) 510], it was held thus:

(SCC pp. 404g-405a) "... Certainly, recall could be permitted if essential for the just decision, but not on such consideration as has been adopted in the present case. Mere observation that recall was necessary "for ensuring fair trial" is not enough unless there are tangible reasons to show how the fair trial suffered without recall. Recall is not a matter of course and the discretion given to the court has to be exercised judiciously to prevent failure of justice and not arbitrarily. While the party is even permitted to correct its bona fide error and may be entitled to further opportunity even when such opportunity may be sought without any fault on the part of the opposite party, plea for recall for advancing justice has to be bona fide and has to be balanced carefully with the other relevant considerations including uncalled for hardship to the witnesses and uncalled for delay

in the trial. Having regard to these considerations, there is no ground to justify the recall of witnesses already examined."

21. The delay in filing the application is one of the important factors which has to be explained in the application. In *Umar Mohammad v. State of Rajasthan* [*Umar Mohammad v. State of Rajasthan*, (2007) 14 SCC 711 : (2009) 3 SCC (Cri) 244] , this Court has held as under: (SCC p. 719, para 38) "38. Before parting, however, we may notice that a contention has been raised by the learned counsel for the appellant that PW 1 who was examined in Court on 5-7-1994 purported to have filed an application on 1-5-1995 stating that five accused persons named therein were innocent. An application filed by him purported to be under [Section 311](#) of the Code of Criminal Procedure was rejected by the learned trial Judge by order dated 13-5-1995. A revision petition was filed thereagainst and the High Court also rejected the said contention. It is not a case where *stricto sensu* the provisions of [Section 311](#) of the Code of Criminal Procedure could have been invoked. The very fact that such an application was got filed by PW 1 nine months after his deposition is itself a pointer to the fact that he had been won over. It is absurd to contend that he, after a period of four years and that too after his examination-in-chief and cross-examination was complete, would file an application on his own will and volition. The said application was, therefore, rightly dismissed."

10. In *Manju Devi v State of Rajasthan*, (2019) 6 SCC 203, this Court emphasized that a discretionary power like Section 311CrPC is to enable the Court to keep the record straight and to clear any ambiguity regarding the evidence, while also ensuring no prejudice is caused to anyone. A note of caution was sounded in *Swapan Kumar Chatterjee v Central Bureau of Investigation*, (2019) 14 SCC 328 as under:

'10. The first part of this section which is permissive gives purely discretionary authority to the criminal court and enables it at any stage of inquiry, trial or other proceedings under the Code to act in one of the three ways, namely, (i) to summon any person as a witness; or (ii) to examine any person in attendance, though not summoned as a witness; or (iii) to recall and re-examine any person already examined. The second part, which is mandatory, imposes an obligation on the court (i) to summon and examine or (ii) to recall and re-examine any such person if his evidence appears to be essential to the just decision of the case.

11. The first part of this Section which is permissive gives purely discretionary authority to the criminal court and enables it at any stage of inquiry, trial or other proceedings under the Code to act in one of the three ways, namely, (i) to summon any person as a witness; or (ii) to examine any person in attendance, though not summoned as a witness; or (iii) to recall and re-examine any person already examined. The second part, which is mandatory, imposes an obligation on the court (i) to summon and examine or (ii) to recall and re-examine any such person if

his evidence appears to be essential to the just decision of the case.

12. 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 wide power under this Section to even recall witnesses for reexamination 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.

11. Apex Court again in the case of ***Harendra Rai v. State of Bihar 2023 SCC Online SC 1023*** has observed that Section 311, CrPC should be invoked when it is essential for the just decision of the case."

12. In the present case learned counsel for the opposite party nos. 2 and 3 does not have any objection to allow the application under section 311 Cr.P.C., despite being the first informant and also the material witness. The reason for committing suicide by the deceased must come on the record and for that purpose the re-examination of PW-1, PW-2 and PW-4 appears to be essential for just decision of the case, therefore, the present application is allowed. The order dated 5.4.2024 passed by Additional Sessions Judge, court no. 7, Ghaziabad is hereby set aside.

13. The court below is directed to pass a fresh order in the light of the observation made herein above.

14. With the above said observation the present application is **allowed**.

Order Date :- 4.4.2025

Faridul