

IN THE HIGH COURT OF HIMACHAL PRADESH AT SHIMLA

Cr.MMO No. 192 of 2025

Date of Decision: 21.08.2026

Anil Rana

...Petitioner

Versus

Kiran Sharma

...Respondent

Coram:

The Hon'ble Mr. Justice Sandeep Sharma, Judge.

Whether approved for reporting?¹ Yes.

For the Petitioner:

Mr. Sudhir Bhatnagar, Advocate.

For the Respondent:

Mr. Naveen Awasthi, Advocate.

Sandeep Sharma, J. (Oral)

Instant petition filed under Section 528 of the Bharatiya Nagarik Suraksha Sanhita, lays challenge to order dated 07.01.2025 passed by learned Sessions Judge, Kullu, District Kullu, Himachal Pradesh, in Criminal Appeal No. 33 of 2023, whereby an application filed by the petitioner-accused (***hereinafter referred to as the "accused"***) under Section 311 of Cr.P.C., which was subsequently treated as an application filed under Section 391 Cr.P.C., seeking therein permission to re-examine the respondent/complainant (***hereinafter referred to as the "complainant"***) and to examine the Record Keeper alongwith record of complaint dated 05.07.2015 bearing No. Patwar Circle

¹ Whether reporters of the local papers may be allowed to see the judgment?

283/7, dated 06.07.2015, came to be rejected, petitioner has approached this Court in the instant proceedings, praying therein to quash and set aside the impugned order and to permit him to lead additional evidence.

2. Having heard learned counsel for the parties and perused the material available on record, this Court finds that the complainant instituted a complaint under Section 138 of the Negotiable Instruments Act in the Court of learned Judicial Magistrate First Class, Manali, alleging therein that cheque bearing No. 058978, dated 07.05.2016, amounting to Rs. 6, 00,000/-, issued by the accused towards discharge of his lawful liability was dishonoured on account of insufficient funds and learned Court below, on the basis of pleadings as well as evidence led on record by the respective parties, held accused guilty of his having committed the offence punishable under Section 138 of the Act and accordingly convicted and sentenced him to undergo simple imprisonment for a period of six months and pay compensation to the tune of Rs. 8,60,000/- to the respondent/complainant.

3. Being aggrieved and dissatisfied with the aforesaid judgment of conviction and order of sentence passed by learned trial Court, accused preferred an appeal in the Court of learned Sessions Judge, Kullu, which is pending adjudication. In the

aforesaid proceedings, accused though filed an application under Section 311 Cr.P.C, for re-examination of the complainant and for examining the Record Keeper alongwith the record, as detailed hereinabove, but same was treated to have been filed under Section 391 Cr.P.C., averring therein that during the course of trial and cross-examination, counsel representing the appellant/accused inadvertently failed to set up a defence that three security cheques issued in lieu of land leased out by the complainant in favour of the accused for construction of the cottages in her land, were misused. It came to be further pleaded in the application that counsel representing the accused also failed to point out that complaint regarding misuse and leasing out of the cottages by the respondent/complainant was made to the office of the Superintendent of Police, Kullu, vide Complaint dated 05.07.2015 bearing Patwar Circle No. 283/7, dated 06.07.2015 and said complaint was also not put to the complainant at the time of her cross-examination. If the application is read in its entirety, it suggests that although aforesaid document was available with the counsel representing the accused, but he failed to place the same on record, nor afore document was exhibited.

4. Aforesaid prayer made on behalf of the accused came to be seriously refuted by the complainant, who filed reply to the application, contending therein that an attempt is being made to fill

up the lacuna and to delay the further proceedings. It also came to be stated in the reply that in the year 2011-2012, accused had met her husband with the proposal that he wants to construct the cottage at Village Aleo, Post Office and Tehsil Manali, District Kullu, Himachal Pradesh and she has no concern with the construction of the aforesaid cottage. Respondent also stated in the reply that in the month of February 2015, accused person approached her and requested to give him a sum of ₹6,00,000/- for business purpose and she having regard to her cordial relations with the accused, gave sum of ₹6,00,000/- to the accused, who, with a view to discharge his liability, issued cheque bearing No. 058978, dated 07.05.2016, amounting to ₹6,00,000/-. However, said cheque was dishonoured on account of insufficient funds in the bank account of the accused. It also came to be pleaded in the reply that not even a single suggestion was put by learned counsel for the accused while cross-examining her that accused had issued three security cheques. Hence, the application deserved outright rejection.

5. Learned Sessions Judge, Kullu, taking note of aforesaid pleadings, dismissed the application on the ground that though document intended to be put to the complainant in re-cross-examination was very much in existence at the time of cross-examination of the complainant, but yet no steps, if any, were

taken during trial to prove such document on record. Learned Sessions Judge has recorded a finding that there is no merit in the contention that document was not put to the complainant during cross-examination due to negligence on the part of his counsel, rather an attempt is being made to fill up the lacuna and delay the proceedings.

6. I have heard learned counsel for the parties and gone through the record carefully.

7. Impugned order passed by learned Sessions Judge, Kullu, thereby dismissing the application of the accused, clearly reveals that complaint dated 05.07.2015 made to Superintendent of Police, Kullu was marked as Mark-Y, meaning thereby such document was very much available with the counsel of the accused at the time of cross-examination of the complainant. However, no attempt, if any, ever came to be made by counsel representing the accused to get the aforesaid document exhibited in accordance with law, as a result thereof, same cannot be read in evidence.

8. In nutshell, case of the petitioner/accused, is that though aforesaid document, which may be relevant for adjudication of the case at hand, was handed over to his counsel, but he inadvertently failed to put the same to the complainant during her

cross-examination. Perusal of complaint dated 05.07.2015 made to Superintendent of Police, Kullu, copy whereof has been made available by learned counsel for the respondent, reveals that accused prior to filing of the complaint, which is the subject matter of the present case, had some kind of dealings with the husband of the complainant, Shri Hem Raj Sharma, for the construction of cottages, but due to certain reasons, a dispute cropped up between them, which was subsequently compromised. In terms of the compromise, Shri Hem Raj Sharma allegedly gave five cheques to settle the amount, which was due, out of which, three were encashed, whereas rest of two cheques were dishonoured, as they had instructed the bank to stop the payment. Since accused had filed a complaint under Section 138 qua two cheques, which were dishonoured, complainant misused the security cheques, which were lying with her husband.

9. Though, having taken note of the fact that accused admitted the factum with regard to his having issued cheque as well as signatures thereupon, may be as a security cheque, the document intended to be proved by re-examining the complainant may not be of much relevance, but having taken note of the fact that aforesaid document was handed over by the accused to his counsel, who subsequently, while cross-examining the complainant, failed to put the same to her, coupled with the fact

that very purpose and object of Section 391 Cr.P.C., is to ensure that full opportunity is granted to the accused to prove his innocence, this Court is of the view that no prejudice, if any, shall be caused to either of the parties in case prayer made on behalf of the petitioner to re-cross-examine the complainant is accepted, rather that would help the Court below to adjudicate the case in a most effective manner.

10. By now, it is well settled that Court enjoys vast power to summon any person as a witness or recall and re-examine any witness, provided the same is essentially required for just decision of the case and such extraordinary power can be exercised at any stage of inquiry, trial or proceedings of the Court, but with utmost caution and sparingly. It is a well-established principle of criminal jurisprudence that discovery, vindication and establishment of truth are the main purposes of underlying object of Courts of justice. It is also well settled that wider the power, greater the responsibility upon the Court which exercises such power. Section 311, if read in its entirety, clearly reveals that it comprises of two parts; first part reserves the right to the parties to move an application for examination/ re-examination of a witness at any stage, whereas the second part casts a duty upon the Court to examine, re-examine or recall or summon a witness at any stage, if his/her evidence appears to be essential for just decision of the 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 the parties in bringing valuable piece of evidence or leaving ambiguity in the statements of witnesses examined from either side. Reliance in this regard is placed upon judgment passed by Hon'ble Apex Court in ***Zahira Habibullah Sheikh (5) and another vs. State of Gujarat and others (2006) 3 SCC 374***, wherein, Hon'ble Apex Court, held as under:-

"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 for 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 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 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.

28. As indicated above, the Section is wholly discretionary. The second part of it imposes upon the Magistrate an obligation: it is, that the Court shall summon and examine all persons whose evidence appears to be essential to the just decision of the case. It is a cardinal rule in the law of evidence that the best available evidence should be brought before the Court. Section 60, 64 and 91 of the Indian Evidence Act, 1872 (in short, 'Evidence Act') are based on this rule. The Court is not empowered under the provisions of the Code to compel either the prosecution or the defence

to examine any particular witness or witnesses on their side. This must be left to the parties. But in weighing the evidence, the Court can take note of the fact that the best available evidence has not been given, and can draw an adverse inference. The Court will often have to depend on intercepted allegations made by the parties, or on inconclusive, inference from facts elicited in the evidence. In such cases, the Court has to act under the second part of the section. Sometimes the examination of witnesses as directed by the Court may result in what is thought to be "filling of loopholes". That is purely a subsidiary factor and cannot be taken into account. Whether the new evidence is essential or not must of course depend on the facts of each case, and has to be determined by the Presiding Judge.

29. The object of the Section 311 is to bring on record evidence not only from the point of view of the accused and the prosecution but also from the point of view of the orderly society. If a witness called by Court gives evidence against the complainant he should be allowed an opportunity to cross-examine. The right to cross-examine a witness who is called by a Court arises not under the provision of Section 311, but under the Evidence Act which gives a party the right to cross-examine a witness who is not his own witness. Since a witness summoned by the Court could not be termed a witness of any particular party, the Court should give the right of cross-examination to the complainant. These aspects were highlighted in *Jamat Raj Kewalji Govani v. State of Maharashtra*, (AIR 1968 SC 178). 30. Right from the inception of the judicial system it has been accepted that discovery, vindication and establishment of truth are the main purposes underlying existence of Courts of justice. The operative principles for a fair trial permeate the common law in both civil and criminal contexts. Application of these principles involves a delicate judicial balancing of competing interests in a criminal trial, the interests of the accused and the public and to a great extent that of the victim have to be weighed not losing sight of the public interest involved in the prosecution of persons who commit offences.

11. Hon'ble Apex Court in **Raja Ram Prasad Yadav v. State of Bihar and another (2013) 14 SCC 461**, 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. It may be profitable to take note of the following paras of the judgment:-

"14. A conspicuous reading of Section 311 Cr.P.C. would show that widest of the powers have been invested with the Courts when it comes to the question of summoning a witness or to recall or reexamine any witness already examined. A reading of the provision shows that the expression "any" has been used as a pre-fix to "court", "inquiry", "trial", "other proceeding", "person as a witness", "person in attendance though not summoned as a witness", and "person already examined". By using the said expression "any" as a pre-fix to the various expressions mentioned above, it is ultimately stated that all that was required to be satisfied by the Court was only in relation to such evidence that appears to the Court to be essential for the just decision of the case. Section 138 of the Evidence Act, prescribed the order of examination of a witness in the Court. Order of reexamination is also prescribed calling for such a witness so desired for such re-examination. Therefore, a reading of Section 311 Cr.P.C. and Section 138 Evidence Act, insofar as it comes to the question of a criminal trial, the order of re-examination at the desire of any person under Section 138, will have to necessarily be in consonance with the prescription contained in Section 311 Cr.P.C. It is, therefore, imperative that the invocation of Section 311 Cr.P.C. and its application in a particular case can be ordered by the Court, only by bearing in mind the object and purport of the said provision, namely, for achieving a just decision of the case as noted by us earlier. The power vested under the said provision is made available to any Court at any stage in any inquiry or trial or other proceeding initiated under the Code for the purpose of summoning any person as a witness or for examining any person in attendance, even though not summoned as witness or to recall or reexamine any person already examined. Insofar as recalling and reexamination of any person already examined, the Court must necessarily consider and ensure that such recall and re-examination of any person, appears in the view of the Court to be essential for the just decision of the case. Therefore, the paramount requirement is just decision and for that purpose the essentiality of a person to be recalled and re-examined has to be ascertained. To put it differently, while such a widest power is invested with the Court, it is needless to state that exercise of such power should be made judicially and also with extreme care and caution. 15. In this context, we also wish to make a reference to certain decisions rendered by this Court on the interpretation of Section 311 Cr.P.C. where, this Court highlighted as to the basic principles which are to be borne in mind, while dealing with an application under Section 311 Cr.P.C. 15.1 In the decision reported in Jamatraj

Kewalji Govani vs. State of Maharashtra - AIR 1968 SC 178, this Court held as under in paragraph 14:-

"14. It would appear that in our criminal jurisdiction, statutory law confers a power in absolute terms to be exercised at any stage of the trial to summon a witness or examine one present in court or to recall a witness already examined, and makes this the duty and obligation of the Court provided the just decision of the case demands it. In other words, where the court exercises the power under the second part, the inquiry cannot be whether the accused has brought anything suddenly or unexpectedly but whether the court is right in thinking that the new evidence is needed by it for a just decision of the case. If the court has acted without the requirements of a just decision, the action is open to criticism but if the court's action is supportable as being in aid of a just decision the action cannot be regarded as exceeding the jurisdiction." (Emphasis added) 15.2 In the decision reported in Mohanlal Shamji Soni vs. Union of India and another - 1991 Suppl.(1) SCC 271, this Court again highlighted the importance of the power to be exercised under Section 311Cr.P.C. as under in paragraph 10:-

"10....In order to enable the court to find out the truth and render a just decision, the salutary provisions of Section 540 of the Code (Section 311 of the new Code) are enacted where under any court by exercising its discretionary authority at any stage of enquiry, trial or other proceeding can summon any person as a witness or examine any person in attendance though not summoned as a witness or recall or re-examine any person in attendance though not summoned as a witness or recall and reexamine any person already examined who are expected to be able to throw light upon the matter in dispute; because if judgments happen to be rendered on inchoate, inconclusive and speculative presentation of facts, the ends of justice would be defeated." 15.3 In the decision in Raj Deo Sharma (II) vs. State of Bihar - 1999 (7) SCC 604, the proposition has been reiterated as under in paragraph 9:-

"9. We may observe that the power of the court as envisaged in Section 311 of the Code of Criminal Procedure has not been curtailed by this Court. Neither in the decision of the five-Judge Bench in A.R. Antulay case nor in Kartar Singh case such power has been restricted for achieving speedy trial. In other words, even if the prosecution evidence is closed in compliance with the directions contained in the main judgment it is still open to the prosecution to invoke the powers of the court under Section 311 of the Code. We make it clear that if evidence of any witness appears to the court to be essential to 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." (Emphasis added) 15.4. In U.T. of Dadra and Nagar Haveli and Anr. Vs Fatehsinh Mohansinh Chauhan

- 2006 (7) SCC 529, the decision has been further elucidated as under in paragraph 15:-

"15. A conspectus of authorities referred to above would show that the principle is well settled that the exercise of power under Section 311 Cr.PC should be resorted to only with the object of finding out the truth or obtaining proper proof of such facts which lead to a just and correct decision of the case, this being the primary duty of a criminal court. Calling a witness or re-examining a witness already examined for the purpose of finding out the truth in order to enable the court to arrive at a just decision of the case cannot be dubbed as "filling in a lacuna in the 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." (Emphasis supplied). 15.5 In Iddar & Or. vs. Aabida & Anr. - AIR 2007 SC 3029, the object underlying under Section 311 Cr.P.C., has been stated as under in paragraph 9:-

"9...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 for 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 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 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 added)

15.6 In P.Sanjeeva Ra vs Sate of A.P.- AIR 2012 SC 2242, the scope of Section 311 Cr.P.C. has been highlighted by making reference to an earlier decision of this Court and also with particular reference to the case, which was dealt with in that decision in paragraphs 20 and 23, which are as under:-

"20. Grant of fairest opportunity to the accused to prove his innocence was the object of every fair trial, observed this Court in Hoffman Andreas vs. Inspector of Cutoms, Amristsar (2000) 10 SCC 430. The following passage is in this regard apposite: "6. ...In such circumstances, if the new counsel thought to have the material witnesses further examined, the

Court could adopt latitude and a liberal view in the interest of justice, particularly when the court has unbridled powers in the matter as enshrined in Section 311 of the Code. After all the trial is basically for the prisoners and courts should afford the opportunity to them in the fairest manner possible."

23. We are conscious of the fact that recall of the witnesses is being directed nearly four years after they were examined-in-chief about an incident that is nearly seven years old. Delay takes a heavy toll on the human memory apart from breeding cynicism about the efficacy of the judicial system to decide cases within a reasonably foreseeable time period. To that extent the apprehension expressed by Mr. Rawal, that the prosecution may suffer prejudice on account of a belated recall, may not be wholly without any basis. Having said that, we are of the opinion that on a parity of reasoning and looking to the consequences of denial of opportunity to cross-examine the witnesses, we would prefer to err in favour of the appellant getting an opportunity rather than protecting the prosecution against a possible prejudice at his cost. Fairness of the trial is a virtue that is sacrosanct in our judicial system and no price is too heavy to protect that virtue. A possible prejudice to prosecution is not even a price, leave alone one that would justify denial of a fair opportunity to the accused to defend himself." (Emphasis in original) 15.7 In a recent decision of this Court in *Sheikh Jumman vs. State of Maharashtra* - (2012) 9 SCALE 18, the above referred to decisions were followed.

6. Again in an unreported decision rendered by this Court dated 08.05.2013 in *Natasha Singh vs. CBI (State)-Criminal Appeal No.709 of 2013*, where one of us was a party, various other decisions of this Court were referred to and the position has been stated as under in paragraphs 15 and 16: "15. 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 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.

16. Fair trial is the main object of criminal procedure, and it is the duty of the court to ensure that such fairness is not hampered or threatened in any manner. Fair trial entails the interests of the accused, the victim and of the society, and therefore, fair trial includes the grant of fair and proper opportunities to the person concerned, and the same must be ensured as this is a constitutional, as well as a human right. Thus, under no circumstances can a person's right to fair trial be jeopardized. Adducing evidence in support of the defence is a valuable right. Denial of such right would amount to the denial of a fair trial. Thus, it is essential that the rules of procedure that have been designed to ensure justice are scrupulously followed, and the court must be zealous in ensuring that there is no breach of the same. (Vide Talab Haji Hussain vs. Madhukar Purshottam Mondkar & Anr., AIR 1958 SC 376; Zahira Habibulla H. Sheikh & Anr. V State of Gujarat & Ors. AIR 2004 SC 3114; Zahira Babibullah Sheikh & Anr. v. State of Gujarat & Ors., AIR 2006 SC 1367; Kalyani Baskar (Mrs.) v. M.S. Sampooram (Mrs.) (2007) 2 SCC 258; Vijay Kumar vs. State of U.P. & Anr., (2011) 8 SCC 136; and Sudevanand v. State through C.B.I. (2012) 3 SCC 387.)"

17. 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 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 reexamine 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 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 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 safe guard, 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."

12. At this stage, this Court deems it proper to place reliance upon judgment rendered by Hon'ble Apex Court in **Mannan SK and others vs. State of West Bengal and another AIR 2014 SC 2950**, wherein the Hon'ble 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."

13. Aforesaid exposition of law clearly suggests that a fair trial is main object of criminal jurisprudence and it is duty of court to

ensure that 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. Hon'ble 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

14. At this stage, Mr. Naveen Awasthi, learned counsel representing the respondent, invited attention of this Court to the judgment passed by the Hon'ble Apex Court in ***Ajitsinh Chehuji Rathod vs. State of Gujarat and Another, (2024) 4 SCC 453***, to state that power under Section 391 Cr.P.C. can be exercised when the party making such request was prevented from presenting evidence at trial despite due diligence being exercised. He submitted that since document intended to be put to the complainant was very much in existence and available at the time of cross-examination of the complainant, it cannot be said that despite due diligence, such document could not be put to her. However, this Court is not impressed with the aforesaid submission of learned counsel for the respondent. True it is that document intended to be put to the complainant was available at the time of

cross-examination during the trial, however, same was inadvertently not put to her, even though the relevant material was duly supplied to the counsel by the accused, but yet he failed to put the same to the complainant during her cross-examination.

15. Needless to say, an accused cannot be made to suffer on account of negligence or inaction, if any, on the part of his/her counsel. Though, in the instant case, accused was diligent in supplying the relevant material, but his counsel, while cross-examining the complainant, failed to exercise due diligence, as a result thereof, document which ought to have been duly exhibited was merely marked.

16. At this stage, it would be profitable to reproduce relevant para of the judgment passed by Hon'ble Apex Court in ***Ajitsinh Chehuji Rathod*** case(supra), which read as under:-

“8. At the outset, we may note that the law is well-settled by a catena of judgments rendered by this Court that power to record additional evidence under Section 391CrPC should only be exercised when the party making such request was prevented from presenting the evidence in the trial despite due diligence being exercised or that the facts giving rise to such prayer came to light at a later stage during pendency of the appeal and that non-recording of such evidence may lead to failure of justice”.

17. Though, Mr. Naveen Awasthi, learned counsel for the respondent made this Court peruse certain documents annexed with the reply to demonstrate that complaint, which is intended to be put to the complainant stands withdrawn and as such, same

has lost its relevance, however this Court is not persuaded to agree with learned counsel for the respondent for the reason that though on account of closure of the complaint criminal action may not be taken against the complainant, but same may be relevant to establish factum with regard to issuance of the security cheques by the accused to the husband of the complainant, which allegedly subsequently came to be misused by the complainant.

18. Consequently, in view of the detailed discussion made hereinabove as well as law taken into consideration, this Court finds merit in the present petition and accordingly, same is allowed. The impugned order dated 07.01.2025 passed by learned Sessions Judge, Kullu, District Kullu, Himachal Pradesh, in Criminal Appeal No. 33 of 2023, is quashed and set-aside. Learned Court below is directed to permit the petitioner-accused to conduct re-cross-examination of the respondent/complainant and examine the record keeper alongwith the record of complaint dated 05.07.2015 bearing No. Patwar Circle 283/7, dated 06.07.2015 on the date to be fixed by Court below.

19. Having taken note of the fact that complaint is pending since the year 2016 and the cheque in question was issued on 07.05.2016, this Court deems it fit to direct both the parties through their respective counsel to remain present in the Court of learned

Sessions Judge, Kullu, on 15.09.2026, enabling it to fix the date for summoning the record from the office of the Superintendent of Police, Kullu, District Kullu, Himachal Pradesh and re-examination of the complainant and examination of record keeper.

20. It is made clear that in case the needful is not done on the date fixed by the learned Court below, no further opportunity shall be granted to the petitioner-accused, rather in that situation, learned Court below shall proceed to decide the case on the basis of the pleadings and evidence already collected on record.

21. Having taken note of the fact that case is hanging fire for the last 10 years, this Court hopes and trusts that learned Court below shall decide the appeal expeditiously, preferably within a period of two months. Pending applications, if any, also stand disposed of.

22. Any observations made hereinabove shall not be construed as an expression of opinion on the merits of the case and shall remain confined solely to the adjudication and disposal of the present petition.

(Sandeep Sharma)
Judge

August 21, 2026
(shankar)