

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr. MMO No. 585 of 2026

Reserved on: 14.09.2026

Decided on: 25.09.2026

Ghanthu Ram

.... Petitioner

Versus

Rajeev Kumar

.... Respondent

Coram

Hon'ble Mr Justice Rakesh Kainthla, Judge.

Whether approved for reporting?¹ No

For the Petitioner : Mr Maan Singh, Advocate.

For the Respondent : Mr Susheel Gautam, Advocate.

Rakesh Kainthla, Judge

The petitioner has filed the present petition against the order dated 13.04.2026 passed by the learned Judicial Magistrate First Class, Manali, District Kullu (learned Trial Court), vide which an application filed under Section 311 of the Code of Criminal Procedure (Cr.P.C.) by the respondent (accused before the learned Trial Court) was allowed. (*The parties shall hereinafter be referred to*

¹ Whether reporters of Local Papers may be allowed to see the judgment? Yes.

in the same manner as they were arrayed before the learned Trial Court for convenience).

2. Briefly stated, the facts giving rise to the present petition are that the complainant filed a complaint before the learned Trial Court against the accused for the commission of an offence punishable under Section 138 of the Negotiable Instruments Act (NI Act). It was asserted that the accused required money in the year 2017. He approached the complainant and borrowed a sum of ₹8,10,000/-. He issued a cheque for ₹8,10,000/- to repay the debt, which was dishonoured with an endorsement “account closed”. The accused failed to repay the money despite the receipt of valid notice of demand. Hence, a complaint was filed before the learned Trial Court for taking action against the accused as per the law.

3. The learned Trial Court found sufficient reasons to summon the accused. When the accused appeared, a notice of accusation was put to him for the commission of an offence punishable under Section 138 of the NI Act, to which he pleaded not guilty and claimed to be tried.

4. Learned Trial Court recorded the complainant's statement and the statement of the accused under Section 313 of the Code of Criminal Procedure, and listed the matter for recording the statements of defence witnesses. The accused filed an application under Section 311 of the Cr.P.C. for summoning the dealing Clerk/Branch Manager of Punjab National Bank with the record of opening the account No. 2134000100058644 in the name of Rajeev S/o Dole Ram along with the KYC documents submitted at the time of its opening and its account statement.

5. The application was opposed by filing a reply asserting that the application was filed at a belated stage to prolong the proceedings. The complainant had examined the bank official along with the record. The accused had failed to produce the evidence despite repeated opportunities, and the application was filed to prolong the Court proceedings. Hence, it was prayed that the present application be dismissed.

6. Learned Trial Court held that the best evidence should come on record. Therefore, the application was allowed, and witnesses were ordered to be summoned.

7. Being aggrieved by the order passed by the learned Trial Court, the complainant has filed the present petition asserting that the learned Trial Court erred in allowing the present application. Account number 2134000100058644 has nothing to do with the complainant. The cheque was drawn on account number 790910110001865. The name of the accused was printed on the cheque along with his parentage. The order is unreasoned and does not disclose why the examination of the witnesses was necessary. Therefore, it was prayed that the present petition be allowed and the order passed by the learned Trial Court be set aside.

8. I have heard. Mr Maan Singh, learned counsel for the petitioner/complainant, and Mr Susheel Gautam, learned counsel for the respondent/accused.

9. Mr Maan Singh, learned counsel for the petitioner/complainant, submitted that the learned Trial Court erred in allowing the application. The accused is seeking to produce the record related to some other account which has no relevance to the present case. Only relevant evidence can be summoned, and the relevance of the document sought to be

produced is not apparent on record. The application has been filed to prolong the proceedings and delay the conclusion of the trial. Therefore, he prayed that the present petition be allowed and the order passed by the learned Trial Court be set aside. He relied upon the judgment in *Swapan Kumar Chatterjee vs. Central Bureau of Investigation* (2019) 14 SCC 328 in support of his submission.

10. Mr Susheel Gautam, learned counsel for the respondent/accused, submitted that the document is essential to show the falsity of the complainant's case. There is a discrepancy in the name of the account holder, and it is essential to summon the record from the bank to clarify the ambiguity. Therefore, he prayed that the present petition be dismissed.

11. I have given considerable thought to the submissions made at the bar and have gone through the records carefully.

12. It was laid down by the Hon'ble Supreme Court in *V.N. Patil v. K. Niranjan Kumar*, (2021) 3 SCC 661: 2021 SCC OnLine SC 172, that the object underlying Section 311 of Cr.P.C. is that there should not be any failure of justice due to the mistake of either party in bringing the valuable evidence on record or leaving ambiguity in

the statements of witnesses examined from either side. It was observed:

14. The object underlying Section 311 CrPC is that there may not be a failure of justice on account of the 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 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 the discretionary power conferred under Section 311 CrPC has to be exercised judiciously, as it is always said, “the wider the power, the greater is the necessity of caution while the exercise of judicious discretion”.

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16. This principle has been further reiterated in *Mannan Shaikh v. State of W.B.*, (2014) 13 SCC 59 : (2014) 5 SCC (Cri) 547 and thereafter in *Ratanlal v. Prahlad Jat*, (2017) 9 SCC 340 : (2017) 3 SCC (Cri) 729 and *Swapan Kumar Chatterjee v. CBI*, (2019) 14 SCC 328 : (2019) 4 SCC (Cri) 839. The relevant paragraphs of *Swapan Kumar Chatterjee v. CBI*, (2019) 14 SCC 328 : (2019) 4 SCC (Cri) 839 are as under: (*Swapan Kumar Chatterjee case [Swapan Kumar Chatterjee v. CBI, (2019) 14 SCC 328 : (2019) 4 SCC (Cri) 839]*, SCC p. 331, paras 10-11)

“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. 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 the 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.”

17. The aim of every court is to discover the truth. Section 311 CrPC 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 CrPC has to be exercised judiciously for strong and valid reasons and with caution and circumspection to meet the ends of justice.”

13. It was held in *State v. N. Seenivasagan*, (2021) 14 SCC 1: 2021 SCC OnLine SC 212, that the true test under Section 311 is whether the evidence of the person who is sought to be examined or recalled is essential to the just decision of the case or not. It was observed:

“12. In our view, having due regard to the nature and ambit of Section 311 of the CrPC, it was appropriate and proper that the applications filed by the prosecution ought to have been allowed. Section 311 provides that any court may, at any stage of any inquiry, trial or other proceedings under CrPC, summon any person as a witness, examine any person in attendance, though not summoned as a witness, or recall and re-examine any person already examined and the Court shall summon and examine or recall and re-examine any such person “if his evidence appears to it to be essential to the just decision of the case”. The true test, therefore, is whether it appears to the Court that the evidence of such a person who is sought to be recalled is essential to the just decision of the case.

13. In *Manju Devi v. State of Rajasthan*, (2019) 6 SCC 203 : (2019) 2 SCC (Cri) 765, a two-Judge Bench of this Court noted that an application under Section 311 could not be rejected on the sole ground that the case had been pending for an inordinate amount of time (ten years there). Rather, it noted that: (SCC p. 209, para 13)

“13. ... the length/duration of a case cannot displace the basic requirement of ensuring a just decision after taking all the necessary and material evidence on record. In other words, the age of a case, by itself, cannot be decisive of the matter when a prayer is made for examination of a material witness.

Speaking for the Court, Dinesh Maheshwari J. expounded on the principles underlying Section 311 in the following terms: (*Manju Devi case [Manju Devi v. State of Rajasthan*, (2019) 6 SCC 203: (2019) 2 SCC (Cri) 765], SCC pp. 207-08, para 10)

“10. It needs hardly any emphasis that the discretionary powers like those under Section 311CrPC are essentially intended to ensure that every necessary and appropriate measure is taken by the Court to keep the record straight and to

clear any ambiguity insofar as the evidence is concerned, as also to ensure that no prejudice is caused to anyone. The principles underlying Section 311CrPC and amplitude of the powers of the court thereunder have been explained by this Court in several decisions [Vide *Mohanlal Shamji Soni v. Union of India*, 1991 Supp (1) SCC 271: 1991 SCC (Cri) 595; *Zahira Habibulla H. Sheikh v. State of Gujarat*, (2004) 4 SCC 158: 2004 SCC (Cri) 999; *Mina Lalita Baruwa v. State of Orissa*, (2013) 16 SCC 173 : (2014) 6 SCC (Cri) 218; *Rajaram Prasad Yadav v. State of Bihar*, (2013) 14 SCC 461 : (2014) 4 SCC (Cri) 256 and *Natasha Singh v. CBI*, (2013) 5 SCC 741 : (2013) 4 SCC (Cri) 828]. In *Natasha Singh v. CBI* [*Natasha Singh v. CBI*, (2013) 5 SCC 741 : (2013) 4 SCC (Cri) 828], though the application for examination of witnesses was filed by the accused but, on the principles relating to the exercise of powers under Section 311, this Court observed, inter alia, as under : (*Natasha Singh case* [*Natasha Singh v. CBI*, (2013) 5 SCC 741 : (2013) 4 SCC (Cri) 828], SCC pp. 746 & 748-49, paras 8 & 15)

‘8. Section 311CrPC empowers the court to summon a material witness, or to examine a person present at “any stage” of “any enquiry”, or “trial”, or “any other proceedings” under CrPC, or to summon any person as a witness, or to recall and re-examine any person who has already been examined if his evidence appears to it to be essential to the arrival of a just decision of the case. Undoubtedly, CrPC has conferred a very wide discretionary power upon the court in this respect, but such a discretion is to be exercised judiciously and not arbitrarily. The power of the court in this context is very wide, and in the exercise of the same, it may

summon any person as a witness at any stage of the trial or other proceedings. The court is competent to exercise such power even suo motu if no such application has been filed by either of the parties. However, the court must satisfy itself that it was in fact essential to examine such a witness, or to recall him for further examination, in order to arrive at a just decision of the case.

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 311CrPC 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 311CrPC 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 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.” (emphasis in original)”

14. It was laid down by the Hon’ble Supreme Court in *Varsha Garg v. State of M.P.*, (2023) 19 SCC 646: 2022 SCC OnLine SC 986 that the Court has the jurisdiction under Section 311 Cr.P.C. to summon any witness, recall or re-examine any person for the just decision of the case. It was observed at page 659: –

31. Having clarified that the bar under Section 301 is inapplicable and that the appellant is well placed to pursue this appeal, we now examine Section 311 of CrPC. Section 311 provides that the court “may”:

(i) Summon any person as a witness or to examine any person in attendance, though not summoned as a witness; and

(ii) Recall and re-examine any person who has already been examined.

This power can be exercised at any stage of any inquiry, trial or other proceeding under the CrPC. The latter part of Section 311 states that the court “shall” summon and examine or recall and re-examine any such person “if his evidence appears to the court to be essential to the just decision of the case”. Section 311 contains a power upon the court in broad terms. The statutory provision must be read

purposely to achieve the intent of the statute to aid in the discovery of truth.

32. The first part of the statutory provision, which uses the expression “may”, postulates that the power can be exercised at any stage of an inquiry, trial or other proceeding. The latter part of the provision mandates the recall of a witness by the court as it uses the expression “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”. Essentially, the evidence of the person who is to be examined, coupled with the need for a just decision of the case, constitutes the touchstone that must guide the decision of the court. The first part of the statutory provision is discretionary, while the latter part is obligatory.

33. A Two-Judge Bench of this Court in *Mohanlal Shamji Soni v. Union of India*, 1991 Supp (1) SCC 271: 1991 SCC (Cri) 595, while dealing with pari materia provisions of Section 540 of the Criminal Code of Procedure, 1898, observed: (SCC p. 279, para 16)

“16. The second part of Section 540, as pointed out, albeit imposes upon the court an obligation of summoning or recalling and re-examining any witness, and the only condition prescribed is that the evidence sought to be obtained must be essential to the just decision of the case. When any party to the proceedings points out the desirability of some evidence being taken, then the court has to exercise its power under this provision — either discretionary or mandatory — depending on the facts and circumstances of each case, having in view that the most paramount principle underlying this provision is to discover or to obtain proper proof of relevant facts in order to meet the requirements of justice.”

34. S. Ratnavel Pandian, J., speaking for the two-Judge Bench, noted that the power is couched in the widest possible terms and calls for no limitation, either with regard to the stage at which it can be exercised or the manner of its exercise. It is only circumscribed by the principle that the “evidence to be obtained should appear to the court essential to a *just decision of the case* by getting at the truth by all lawful means. In that context, the Court observed: (*Mohanlal Shamji Soni case [Mohanlal Shamji Soni v. Union of India, 1991 Supp (1) SCC 271: 1991 SCC (Cri) 595]*, SCC p. 280, para 18)

“18. ... Therefore, it should be borne in mind that the aid of the section should be invoked only with the object of discovering relevant facts or obtaining proper proof of such facts for a just decision of the case, and it must be used judicially and not capriciously or arbitrarily because any improper or capricious exercise of the power may lead to undesirable results. Further, it is incumbent that due care should be taken by the court while exercising the power under this section and it should not be used for filling up the lacuna left by the prosecution or by 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 rival side and further the additional evidence should not be received as a disguise for a retrial or to change the nature of the case against either of the parties.”

35. Summing up the position as it obtained from various decisions of this Court, namely, *Rameshwar Dayal v. State of U.P.*, (1978) 2 SCC 518: 1978 SCC (Cri) 311, *State of W.B. v. Tulsidas Mundhra*, 1962 SCC OnLine SC 413: 1963 Supp (1) SCR 1, *Jamatraj Kewalji Govani v. State of Maharashtra*, 1967 SCC OnLine SC 19 : (1967) 3 SCR 415: AIR 1968 SC 178, *Masalti v. State of U.P.*, 1964 SCC OnLine SC 30 : (1964) 8 SCR 133: AIR 1965 SC 202, *Rajeswar Prasad Misra v. State of W.B.*, 1965 SCC

OnLine SC 122 : (1966) 1 SCR 178: AIR 1965 SC 1887 and Ratilal Bhanji Mithani v. State of Maharashtra, (1971) 1 SCC 523: 1971 SCC (Cri) 231], the Court held : (Mohanlal Shamji Soni v. Union of India, 1991 Supp (1) SCC 271: 1991 SCC (Cri) 595], SCC p. 283, para 27)

“27. The principle of law that emerges from the views expressed by this Court in the above decisions is that the criminal court has ample power to summon any person as a witness or recall and re-examine any such person even if the evidence on both sides is closed and the jurisdiction of the court must obviously be dictated by exigency of the situation, and fair play and good sense appear to be the only safe guides and that only the requirements of justice command the examination of any person which would depend on the facts and circumstances of each case.”

36. 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 the contrary, the court has a vital role to discharge in ensuring that the cause of discovering truth as an aid in the realisation of justice is manifest.

15. It was further held that filling up the loopholes is a subsidiary factor, and the Court should be concerned with the essentiality of the evidence. It was observed at page 662: –

43. In the decision in *Zahira Habibullah Sheikh (5) v. State of Gujarat, (2006) 3 SCC 374 : (2006) 2 SCC (Cri) 8*, which was more recently reiterated in *Godrej Pacific Tech. Ltd. v.*

Computer Joint India Ltd., (2008) 11 SCC 108 : (2009) 2 SCC (Cri) 455], the Court specifically dealt with this objection and observed that the resultant filling of loopholes on account of allowing an application under Section 311 is merely a subsidiary factor, and the court's determination of the application should only be based on the test of the essentiality of the evidence. It noted that: [*Zahira Habibullah Sheikh (5) v. State of Gujarat*, (2006) 3 SCC 374: (2006) 2 SCC (Cri) 8], SCC p. 393, para 28]

28. ... 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 an 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." (emphasis supplied)

44. The right of the accused to a fair trial is constitutionally protected under Article 21. However, in *Mina Lalita Baruwa v. State of Orissa*, (2013) 16 SCC 173 : (2014) 6 SCC (Cri) 218, while reiterating *Rajendra Prasad v. Narcotic Cell*, (1999) 6 SCC 110: 1999 SCC (Cri) 1062, the Court observed that it is the duty of the criminal court to allow the prosecution to correct an error in the interest of justice. In *Rajendra Prasad v. Narcotic Cell*, (1999) 6 SCC 110: 1999 SCC (Cri) 1062, the Court held that: (*Rajendra Prasad case* [*Rajendra*

Prasad v. Narcotic Cell, (1999) 6 SCC 110: 1999 SCC (Cri) 1062], SCC p. 113, para 8)

“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 an irreparable lacuna. *No party in a trial can be foreclosed from correcting errors. If proper evidence was not adduced or 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, the 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.” (emphasis supplied)

45. 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 the form of the call details, which are already on record but use codes to signify the location of the 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.

46. Finally, we also briefly deal with the objection of the respondents regarding the stage at which the application under Section 311 was filed. The respondents have placed reliance on *Swapan Kumar Chatterjee v. CBI*, (2019) 14 SCC 328 : (2019) 4 SCC (Cri) 839, a two-Judge Bench decision of this Court, to argue that the application should not be allowed as it has been made at a belated stage. The Court in *Swapan Kumar Chatterjee v. CBI*, (2019) 14 SCC 328;

(2019) 4 SCC (Cri) 839 observed: (SCC p. 331, paras 11-12)

“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 wide 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 a 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.”

47. In the present appeal, the argument that the application was filed after the closure of the evidence of the prosecution is manifestly erroneous. As already noted above, the closure of the evidence of the prosecution took place after the application for the production of the decoding register and for the summoning of the witness under Section 311 was dismissed. Though the dismissal of the application and the closure of the prosecution evidence both took place on 13-11-2021, the application by the prosecution had been filed on 15-3-2021, nearly eight months earlier. As a matter of fact, another witness for the prosecution, Rajesh Kumar Singh, was also released after examination and cross-examination on

the same day as recorded in the order dated 13-11-2021 of the trial court.

48. The court is vested with a broad and wholesome power, in terms of Section 311CrPC, 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. This Court, in *Zahira Habibulla H. Sheikh v. State of Gujarat*, (2004) 4 SCC 158: 2004 SCC (Cri) 999, while dealing with the prayers for adducing additional evidence under Section 391CrPC 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 : (SCC pp. 188-89, para 43)

“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 the 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 the 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 wishful or pretend to be blissfully 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 cannot also play*

into the hands of such a prosecuting agency, showing indifference or adopting an attitude of total aloofness.” (emphasis supplied)

49. Further, in *Zahira Habibullah Sheikh (5) v. State of Gujarat*, (2006) 3 SCC 374: (2006) 2 SCC (Cri) 8, the Court reiterated the extent of powers under Section 311 and held that: (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 to 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 a 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, 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)

50. The Court while reiterating the principle enunciated in *Mohanlal Shamji Soni v. Union of India*, 1991 Supp (1) SCC 271: 1991 SCC (Cri) 595 stressed upon the wide ambit of Section 311 which allows the power

to be exercised at any stage and held that : (*Zahira Habibulla H. Sheikh v. State of Gujarat*, (2004) 4 SCC 158: 2004 SCC (Cri) 999], SCC p. 189, para 44)

“44. The power of the court under Section 165 of the Evidence Act is, in a way, complementary to its power under Section 311 of the Code. The section consists of two parts, i.e., (i) giving discretion to the court to examine the witness at any stage, and (ii) the mandatory portion which compels the court to examine a witness if his evidence appears to be essential to the just decision of the court. Though the discretion given to the court is very wide, the very width requires a corresponding caution. In *Mohanlal Shamji Soni v. Union of India*, 1991 Supp (1) SCC 271: 1991 SCC (Cri) 595 this Court has observed, while considering the scope and ambit of Section 311, that the very usage of the words such as, “any court”, “at any stage”, or “any enquiry or trial or other proceedings”, “any person” and “any such person” clearly spells out that the section has expressed in the widest-possible terms and do not limit the discretion of the court in any way. However, as noted above, the very width requires a corresponding caution that the discretionary powers should be invoked as the exigencies of justice require and exercised judicially with circumspection and consistently with the provisions of the Code. *The second part of the section does not allow any discretion but obligates and binds the court to take necessary steps if the fresh evidence to be obtained is essential to the just decision of the case, “essential” to an active and alert mind and not to one which is bent to abandon or abdicate. The object of the section is to enable the court to arrive at the truth irrespective of the fact that the prosecution or the defence has failed to produce some evidence which is necessary for a just and proper disposal of the case. The power is exercised, and the evidence is examined, neither to help the prosecution nor the defence, if the court feels*

that there is a necessity to act in terms of Section 311, but only to subserve the cause of justice and public interest. It is done with an object of getting the evidence in aid of a just decision and to uphold the truth.” (emphasis supplied)

51. While reiterating the decisions of this Court in *Karnel Singh v. State of M.P.*, (1995) 5 SCC 518: 1995 SCC (Cri) 977, *Paras Yadav v. State of Bihar*, (1999) 2 SCC 126: 1999 SCC (Cri) 104, *Ram Bihari Yadav v. State of Bihar*, (1998) 4 SCC 517: 1998 SCC (Cri) 1085 and *Amar Singh v. Balwinder Singh*, (2003) 2 SCC 518: 2003 SCC (Cri) 641 this Court held that the court may interfere even at the stage of appeal : (*Zahira Habibulla H. Sheikh v. State of Gujarat*, (2004) 4 SCC 158: 2004 SCC (Cri) 999], SCC p. 196, para 64)

“64. It is no doubt true that the accused persons have been acquitted by the trial court and the acquittal has been upheld, but if the acquittal is unmerited and based on tainted evidence, tailored investigation, unprincipled prosecutor and perfunctory trial and evidence of threatened/terrorised witnesses, it is no acquittal in the eyes of the law, and no sanctity or credibility can be attached and given to the so-called findings. It seems to be nothing but a travesty of truth, fraud on the legal process and the resultant decisions of courts — coram non judis and non est. There is, therefore, every justification to call for interference in these appeals.”

16. A similar view was taken in *K.P. Tamilmaran Vs. State and others* 2025 INSC 576 wherein it was observed: -

47. Before moving further, we consider it necessary to deal with the law relating to section 311 CrPC under which PW-49 was summoned as a witness. Section 311 CrPC reads as follows:

“311. Power to summon a material witness or examine a 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.”

This Section 311 of the CrPC provides wide powers to a Criminal Court to do the following:

- I. Summon any person as a witness, or
- ii. Examine any person present in court, though not summoned as a witness, or
- iii. Recall and re-examine any person already examined.

The above powers can be exercised ‘*at any stage of any inquiry, trial or other proceeding*’ under the CrPC. The provision can be divided into two parts. The word ‘*may*’ is used in the first part of the section, which grants the Court the discretion to summon a witness. In contrast, the second part of the Section uses the word ‘*shall*’, which casts a duty on the Court to summon and examine or recall or re-examine any such person as a witness when it appears to the Court that it is essential to do so for a just decision in the case. In other words, the second part is mandatory, and Courts are obligated to exercise their powers under Section 311 CrPC when the evidence of any person is essential for a just decision of the case. (See: *Jamatraj Kewalji Govani v. State of Maharashtra, 1967 SCC OnLine SC 19*)

48. As is clear from the language of the provision itself, there is wide discretion with the Courts under Section 311 CrPC. These powers can be exercised *suo motu* or on an application moved by either side. After all, the object is that the Court must not be deprived

of the benefit of any valuable evidence. It is absolutely necessary that the Court must be apprised of the best evidence available. Thus, Courts have been given wide powers to decide on their own if a witness is required to be called or recalled for examination or re-examination. This power under Section 311 CrPC can be invoked at any stage of the trial, even after the closing of the evidence. Section 311 CrPC can also be read along with Section 165 of the Evidence Act, as the powers of the Court under Section 165 of the Evidence Act are complementary to Section 311 of CrPC. As discussed above, powers under Section 311 CrPC can either be exercised on an application moved by either side to the case or *suo motu* by the Court. In case a person is not listed as a witness in the charge-sheet but later the prosecution desires to bring that person as an additional prosecution witness, then the prosecution can move an application to bring this person as a prosecution witness. It is then for the Court to decide whether such a person is required as a witness or not. If the Court finds that such a person should have been examined as a prosecution witness and he/she was omitted from the list of witnesses due to some oversight, mistake or for any other reason, the Court may allow the application and such a person can be examined as a prosecution witness. Thereafter, the normal course of examination-in-chief, cross-examination, etc., would follow as per the procedure. On the other hand, when the Court calls a person as a *Court witness*, there are some restrictions regarding the cross-examination of such a witness.

17. A similar view was taken in *Swapan Kumar Chatterjee* (supra).

18. The certified copy of the cheque (Annexure P1) shows that it was drawn on the account number 790910110001865. The

application under Section 311 of Cr.P.C. mentions the account No. 2134000100058644. There is nothing on record to show how these two account numbers are connected to each other. The cheque was drawn on 790910110001865, and the record of the account No. 2134000100058644 is irrelevant in the present case.

19. Section 5 of the Indian Evidence Act, corresponding to Section 3 of Bharatiya Sakshya Adhiniyam, 2023 (in short “BSA”), provides that the evidence may be given, in any proceeding, of the existence, or non-existence, of every fact in issue, and of such other facts, as are hereinafter declared to be relevant and of no others. Thus, the language of the statute is quite specific that evidence of only the facts in issue and relevant facts can be given. The account number 2134000100058644 is not a fact in issue or a relevant fact because the cheque was not drawn on this account. Therefore, the evidence cannot be given of the details related to the account number 2134000100058644.

20. Learned Trial Court held that the best evidence should come on record, which would clarify a fact related to the case. However, it is not explained in the order as to how the admission of the record pertaining to a different account would clarify any

fact in the present complaint. The learned Trial Court did not refer to Section 5 of the Indian Evidence Act or Section 3 of the BSA and erred in allowing the application.

21. Therefore, the present petition is allowed, and the order dated 13.04.2026 passed by the learned Trial Court is set aside, and the application filed by the accused under Section 311 for summoning the record of account No. 2134000100058644 is dismissed.

22. The observation made hereinabove shall remain confined to the disposal of the petition and will have no bearing whatsoever on the merits of the case.

(Rakesh Kainthla)
Judge

25th September, 2026
(Nikita)