

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Revision No.520 of 2018**

Balbhadra Prasad Mittal, S/o Banwari Lal Mittal, aged about 62 years, R/o Janjgir, P.S. and Tahsil Janjgir, District Janjgir-Champa, Chhattisgarh

---- **Applicant**

versus

Natvarlal Agrawal, S/o Late Shri Harchandray Agrawal, aged about 56 years, R/o Naya Baradwar, Tahsil Sakti, District Janjgir-Champa, Chhattisgarh

--- **Respondent**

For Applicant	:	Smt. Renu Kochar, Advocate
For Respondent	:	Shri Ratnesh Kumar Agrawal, Advocate

Hon'ble Shri Justice Arvind Singh Chandel

Order on Board

3.7.2018

1. With the consent of Learned Counsel appearing for the parties, the matter is heard finally.
2. The instant revision has been preferred against the order dated 28.3.2018 passed by the Judicial Magistrate First Class, Sakti, District Janjgir-Champa in Criminal Case No.365 of 2016, whereby the application moved by the Applicant/accused under Section 311 of the Code of Criminal Procedure has been rejected.
3. The Respondent/Complainant filed a complaint case before the Judicial Magistrate First Class, Sakti, District Janjgir-Champa under Section 138 of the Negotiable Instruments Act. During trial, at the stage of recording of defence witness, the Applicant/accused submitted an application under Section 311 of the Code of Criminal Procedure for taking some documents on record which was dismissed vide the impugned order dated 28.3.2018 on the ground

that no such provision is contained in Section 311 of the Code of Criminal Procedure.

4. Learned Counsel appearing for the Applicant submits that in the subject application, Section 311 Cr.P.C. was inadvertently mentioned by the Applicant, therefore, Learned Judicial Magistrate First Class should have decided the said application on merits.
5. Per contra, Learned Counsel appearing for the Respondent supported the impugned order.
6. I have heard Learned Counsel appearing for the parties and perused the material available with due care.
7. Section 311 of the Code of Criminal Procedure reads as under:

“311. Power to summon material witness, or examine person present.—Any Court may, at any stage of any inquiry, trial or other proceeding under this Code, summon any person as a witness, or examine any person in attendance, though not summoned as a witness, or recall and re-examine any person already examined; and the Court shall summon and examine or recall and re-examine any such person if his evidence appears to it to be essential to the just decision of the case.”

8. A bare perusal of the above-quoted provision makes it clear that under Section 311 of the Code of Criminal Procedure only a witness can be summoned for evidence.
9. Vide the application under Section 311 of the Code of Criminal

Procedure, it was prayed by the Applicant for taking some additional documents on record, though there is no provision under Section 311 of the Code of Criminal Procedure for taking documents on record. From perusal of the application submitted under Section 311 of the Cr.P.C., it is clear that the Applicant had prayed for taking some documents on record which were detailed in the application and the application was inadvertently mentioned as under Section 311 of the Cr.P.C. In these circumstances, I find that the Judicial Magistrate First Class ought to have decided the application on merits.

- 10.** In the aforestated premises, the revision is allowed. The matter is remanded to the Judicial Magistrate First Class to decide the above-mentioned application of the Applicant afresh in accordance with law as early as possible.

Sd/-
(Arvind Singh Chandel)
Judge