

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Reserved on : 11.10.2023

Pronounced on : 02.11.2023

1.

CRM-M-52219 of 2018 (O&M)
Gulzar Singh and others

...Petitioners
- Versus
- State of Punjab and another

...Respondents
2.

CRM-M-16215 of 2019 (O&M)
Rajesh Pal

....Petitioner
- Versus
- State of Punjab and others

...Respondents
3.

CRM No.45666 of 2018 in
CRR No.3249 of 2018
Gulzar Singh and others

...Petitioners
- Versus
- State of Punjab and another

...Respondents

CORAM: HON'BLE MR. JUSTICE DEEPAK GUPTA

Present: - Mr. Yogesh Goel, Advocate, Mr. Puneet Bhusan, Advocate and Mr. Manav Singhal, Advocate for the petitioners in CRM-M-16215 of 2019.

Mr. Atul Goyal, Advocate for the petitioners in CRM-M-52219 of 2018 and for respondents No.2 to 5 in CRM-M-16215 of 2019.

Mr. B.S. Rana, Senior Advocate with Mr. Nayandeep Rana, and Mr. Yogesh Goel, Advocate, Mr. Vivek Modi, Advocates and Mr. Sagar, Advocate for respondent No.2 in CRM-M-52219 of 2018.
Mr. P.S. Pandher, AAG, Punjab.

DEEPAK GUPTA, J. (Oral)

This order shall dispose of three petitions titled above, as all of them have arisen out of the same proceedings.

2. By way of CRM-M-52219 of 2018 filed under Section 482

C.P.C., prayer has been made to set aside order dated 20.10.2018

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(Annexure P.9), whereby application of respondent No.2 (complainant of the FIR) under Section 311 Cr.P.C read with Section 91 Cr.P.C., for production of the additional evidence/ documents, in a case arising out of FIR No.117 dated 08.06.2006 registered under Section 420, 467, 468, 471, 120-B IPC at Police Station Division No.5, District Ludhiana, pending in the Court of learned Additional Chief Judicial Magistrate, Ludhiana, has been allowed.

3. By way of CRM-M-16215 of 2019, complainant of the case, namely, Rajesh Pal, has assailed the order dated 11.02.2019 (Annexure P.2), passed by learned Additional Chief Judicial Magistrate, Ludhiana, closing the prosecution evidence and also the order dated 11.03.2019 (Annexure P.3) passed by learned Additional Sessions Judge, Ludhiana dismissing the revision petition against the order dated 11.02.2019, during the trial of the afore-said case.

4. CRM No.45666 of 2018, is a letter dated 13.12.2018 received from District and Sessions Judge, Ludhiana, forwarding the letter No.340 dated 11.12.2018 of learned Additional Chief Judicial Magistrate, Ludhiana praying for extension of time to conclude the trial, in the light of order dated 02.07.2018 passed by this Court in CRR No.3249 of 2016.

5. The background facts of the case, as emerge on perusal of the paper book are as under: -

(i) Complainant of the FIR, namely, Rajesh Pal is having a shop M/s Pirthi Chand Kaushal, Grain Market, Khanna, District Ludhiana. It was alleged that few years back, M/s Om Parkash Rice Mill situated near Sahnewal, District Ludhiana had purchased rice from the complainant

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against which an amount of ₹14,68,466.80 was outstanding. In order to recover the amount, a recovery suit was filed on 11.05.1990 by M/s Pirthi Chand Kaushal against M/s Om Parkash Rice Mill, which was decreed ex-parte on 31.05.1990. M/s Om Parkash Rice Mill consisted of five partners including one Ramesh Kumar. In order to realise the decretal amount, the complainant (decree holder) filed the execution petition, in which 14 kanal 16 marlas of land of the judgment debtor i.e., M/s Om Parkash Rice Mill was attached. The sale of the attached land was about to be confirmed, when one Ram Murti filed objections in the execution petition submitting that sale cannot be confirmed qua 02 kanal 19 marlas of land, as he had purchased said land from Ramesh Kumar by way of sale deed dated 07.11.1989 i.e., prior to even filing of the recovery suit. On receiving said objections, the sale qua property measuring 02 kanal 19 marlas of the attached land was adjourned sine die; whereas executing Court confirmed the sale qua the remaining area. The order was duly mutated in the revenue record.

(ii) It was alleged by complainant Rajesh Pal that taking benefit of the sine qua order qua 02 kanal 19 marlas of land, accused Gulzar Singh by forging the revenue record and by forging the signatures of Ram Murti, prepared a Power of Attorney of said Ram Murti and sold the land measuring 02 kanal 19 marlas to Harbans Singh in 1994 and, thereafter, Harbans Singh further sold the land to Kulwinder Singh and Raghbir Singh. It was alleged that all the accused i.e., Gulzar Singh, Harbans Singh, Charanjit Singh, Raghbir Singh and Kulwinder Singh, in conspiracy with each other had committed various offences.

(iii) The FIR was registered on the afore-said allegations, on

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08.06.2006. After investigation, challan appears to have been filed under Section 173 Cr.P.C against Gulzar Singh, Harbans Singh, Charanjit Singh and Raghbir Singh (*petitioners in CRM-M-52219 of 2018*) so as to prosecute them. Charges were framed on 02.04.2014. Prosecution failed to conclude its evidence despite availing sufficient opportunities and the trial Court vide judgment dated 12.08.2015 recorded acquittal of the accused vide Annexure P.2.

(iv) The aggrieved complainant went in appeal. Learned Additional Sessions Judge, Ludhiana set aside the acquittal vide order dated 25.07.2016 and directed the trial Court to proceed with the trial further in accordance with law.

(v) Against the above order dated 25.07.2016, the accused filed CRR No.3249 of 2016 (O&M), which was disposed of by this Court vide order dated 02.07.2018 (Annexure P.3), the operative part of which is as under: -

“16. This petition is therefore dismissed, but with a further direction that if PW1, Rajesh pal, does not appear before the trial court for effective testimony on even one date after the first date to be now assigned for the case to be taken up by that court, thereafter that court would pass appropriate orders as regards the closure of evidence of the prosecution, and proceed further to conclude the trial very expeditiously.

Consequently, the parties are now directed to appear before the trial court on 11.07.2018, after which that court would grant simply one opportunity to respondent no.2 to conclude his testimony as PW-1, and would thereafter proceed with the trial.

It is also directed that the trial shall be concluded now within 6 months, and in case of non-appearance of prosecution witnesses, the trial court would ensure that proceedings under Section 350 Cr.P.C. are followed, if necessary, to secure the presence of government officials, including police officials, and other witnesses as are not appearing

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before that Court despite summons and warrants issued.

17. *It is also made clear that though both learned counsel have addressed arguments on the merits of their case before the trial Court (as regards culpability /non-culpability of the petitioners in the commission of any offence), however, the acquittal of the petitioners by the trial Court having been on the ground of non-leading of prosecution evidence despite many opportunities, and the appellate Courts' finding also being entirely on that aspect alone, the merits of the allegations against the petitioners are not to be gone into at this stage by this Court, with the trial Court to go into the merits of the allegations wholly on the basis of the evidence led before it, if it is led by the prosecution in terms of the direction given hereinabove.*

With the aforesaid observations and direction, this petition is dismissed.”

6. Trial commenced after the afore-said order. Statement of PW1 Rajesh Pal was concluded on 17.08.2018. Three more witnesses were examined, whereas one witness was partly examined and then complainant moved an application (copy Annexure P-7) under Section 311 read with Section 91 Cr.P.C., for production of certain documents and exhibiting/ proving the same. It was pleaded in the application that as per allegations, the accused in connivance with each other and one Kulwinder Singh had forged and fabricated the Power of Attorney bearing Wasika No.9824 dated 17.11.1994 by forging the signatures of Ram Murti and, thereafter, got executed the sale deed in favour of accused Harbans Singh bearing Wasika No.29458 dated 09.12.1994 and then the property was further sold in favour of Raghbir Singh and Kulwinder Singh; that challan had been presented but inadvertently some documents could not be produced along with the challan. Complainant sought to produce following documents: -

- i) *Certified copy of judgment of case titled as “M/s Prithi Chand Kaushal Vs. M/s Om Parkash Kumar Rice Mills”*

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- ii) *Sale Deed bearing Wasika No.43382 dated 29.03.1995*
- iii) *Certified copy of order dated 19.09.1991*
- iv) *Certified copy of plaint of civil suit titled as “Kulwinder Singh Vs. M/s Prithi Chand Kaushal” and its final order dated 07.10.1999*
- v) *Intkal no.2839 pertaining to the land measuring 2 Kanal 19 Marla of Village Bilga.”*

It was further stated in the application that original of the above-said forged and fabricated Power of Attorney as well as sale deeds were in possession of the accused party but the second copy of these documents was lying with Sub-Registrar, Ludhiana and in order to prove execution/ registration thereof, separate application under Section 65 of the Evidence Act had been moved. Application further stated that in order to prove the afore-said documents, following witnesses were required to be examined.

- i) *Concerned Clerk/ record Keeper officer of Sub Registrar Ludhiana along-with the record of forged and fabricated power of attorney bearing wasika no.9824 dated 17.11.1994 and the record of sale deeds bearing wasika no.43382 dated 29.03.1995 and wasika no.29458 dated 09.12.1994.*
- ii) *Concerned Halqa Patwari of Village Bilga, Sub Tehsil Sahnewal, District Ludhiana along with the record of Intkal No.2838 and 2839 pertaining to the land in question of Village Bilga, Sub Tehsil Sahnewal, Tehsil and District Ludhiana.*
- iii) *Ram Singh, Namberdar of Village Natt, Tehsil and District Ludhiana in order to prove the sale deed bearing wasika no.43382 dated 29.03.1995 in favour of accused Raghbir Singh and his friend Kulwinder Singh.*
- iv) *Satpal, Wasika Nawis, New Courts, Ludhiana alongwith the record of entry of sale deed dated 27.03.1995 registered at wasika no.43382 dated 29.03.1995 in order to prove the said sale deed.*
- v) *Om Parkash son of Narrata Ram resident of House No.2861/8, Anaj Mandi, Sirhind, District Fatehgarh Sahib in order to prove*

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the standard signatures of deceased Ram Murti upon the partnership deed executed between Ram Murti, Om Parkash and other partners, so that his signatures could be identified which are matter in dispute in the present case.

- vi) *Ajit Singh son of Harnam Singh resident of Village Kohara, Tehsil and District Ludhiana, who is the marginal witness of the sale deed bearing wasika no.29458 dated 09.12.1994.”*

7. The accused filed reply (copy Annexure P.8), opposing the application on the ground that examination-in-chief of PW3 Kuldeep Singh had earlier been deferred and as per his statement, the relevant record was already available with the prosecution and that by moving this application, complainant wanted to linger on the matter. It was further submitted that application under Section 311 Cr.P.C could not be allowed to introduce new witnesses or to place on record new documents, which had not been collected during investigation and that prosecution could not be allowed to fill in lacunae.

8. As it appears that one more application was moved by prosecution under Section 319 Cr.P.C., to summon Kulwinder Singh as additional accused.

9. By way of common order dated 20.10.2018, learned Additional Chief Judicial Magistrate, Ludhiana disposed of three applications i.e., one under Section 319 Cr.P.C; second under Section 311 read with Section 91 Cr.P.C; and third under Section 65 of the Evidence Act together. The application under Section 319 Cr.P.C was dismissed; whereas the two applications, i.e., one under Section 311 read with Section 91 Cr.P.C and the other under Section 65 of the Evidence Act were allowed.

10. In CRM-M-52219 of 2018, the accused have assailed the

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order dated 20.10.2018 allowing the application under Section 311 read with Section 91 Cr.P.C. It is contended that FIR was lodged 12 years after the sale in favour of Harbans Singh and then in favour of Raghbir and Kulwinder Singh vide sale deed dated 29.03.1995. That objections filed by objector Kulwinder and Raghbir in the execution proceedings have already been upheld vide order dated 06.01.2016. Even the ex parte decree dated 31.05.1990 challenged by the defendants under Order 9 Rule 13 C.P.C has been set aside on 02.05.2002; that in fact complainant was never the owner of the property and that the property in dispute was rightfully transferred from Ramesh Kumar to Ram Murti and from him to Harbans Singh etc., and so no offences are made out. It was submitted further that after the acquittal recorded by the trial Court, which was set aside by the Court of Sessions, this Court vide order dated 02.07.2018 in CRR No.3249 of 2016 had dismissed the petition with direction to the complainant to appear before the trial Court and he was afforded only one opportunity to conclude the testimony. Trial Court was asked to conclude the trial within six months. Thereafter, statements of some of the witnesses were recorded and it was at that stage that complainant chose to file three different applications under Sections 319 Cr.P.C; 311 read with Section 91 Cr.P.C and Section 65 of the Evidence Act; that complainant intends to produce certain documents, which were never annexed with the challan; that by allowing the application by the trial Court, prosecution has been permitted to fill up the lacunae in the case, which is not permissible. Still further, it is contended that neither in his deposition, complainant referred about the documents sought to be adduced nor the same were supplied to the accused. Besides, the documents as mentioned

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in the application pertain to official record and that the same could have been procured by applying certified copies thereof. Prayer is made for setting aside the order dated 20.10.2018.

11. As it appears that in the meantime (during pendency of this petition CRM-M-52219-2018), after recording statements of some more witnesses, the trial Court vide its order dated 11.02.2019 closed the prosecution evidence and posted the case for recording statements of accused under Section 313 Cr.P.C. Complainant assailed the said order dated 11.02.2019 before Court of Sessions but his criminal revision in this regard was dismissed by learned Additional Sessions Judge, Ludhiana vide order dated 11.03.2019.

12. Afore-said order dated 11.03.2019 has been assailed by the complainant by filing CRM-M-16215 of 2019. By giving the chronological details of the various dates fixed before the trial Court, it is contended that despite summons and warrants issued against some of the witnesses, who were government officials/ police officials, they did not appear and that the trial Court without procuring the presence of those witnesses, closed the evidence in hurried manner. It is further submitted that the trial Court vide its letter No.340 dated 11.12.2018 (numbered before this Court as CRM No.45666 of 2018) had sought extension of time but without waiting for further directions of this Court, the evidence has been closed. Prayer has accordingly been made for setting aside the order dated 11.02.2019 passed by learned Additional Chief Judicial Magistrate, Ludhiana closing the evidence of the prosecution and the order dated 11.03.2019 passed by Additional Sessions Judge, Ludhiana dismissing the revision against that order.

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13. By way of letter No.340 dated 11.12.2018 of learned Additional Chief Judicial Magistrate, Ludhiana forwarded to this Court by District and Sessions Judge, Ludhiana vide letter No.1140/EC dated 13.12.2018, circumstances have been mentioned as to why the trial could not be concluded within six months despite order dated 02.07.2018 passed by this Court in CRR No.3249 of 2016, with further prayer to extend the time for another six months to conclude the trial.

14. Needless to say that respondents of CRM-M-52219 of 2018 opposed the petition, by submitting that scope of Section 311 Cr.P.C is quite wide, and that Court is required to see that proposed additional evidence is required for just decision of the case. It is contended by learned State Counsel along with counsel for respondent No.2 – complainant that main allegation against the accused is that they forged the revenue record and the Power of Attorney in the name of Ram Murti and in order to prove the said allegation, the production of the relevant witness so as to prove the standard signatures of deceased Ram Murti upon a partnership deed executed between him and some other partners is necessary so that his signatures could be identified, which are matter in dispute in the present case and that rest of the witnesses are required to either bring or prove the official record. They have defended the impugned order, whereby the trial Court has allowed the application under Section 311 read with Section 91 Cr.P.C.

15. On the other hand, accused of the case have opposed CRM-M-16215 of 2019, and defended the order passed by the trial Court closing the prosecution evidence by submitting that more than adequate opportunities had already been availed by the prosecution, which failed to

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conclude the evidence. Accused also opposed the prayer of trial Court for extension of time for conclusion of trial.

16. I have considered submissions of both the sides and have appraised the record carefully.

17. Section 311 Cr.P.C and Section 91 Cr.P.C are relevant in this case, which read 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.”

“91. Summons to produce document or other thing. -

(1) *Whenever any Court or any officer in charge of a police station considers that the production of any document or other thing is necessary or desirable for the purposes of any investigation, inquiry, trial or other proceeding under this Code by or before such Court or officer, such Court may issue a summons, or such officer a written order, to the person in whose possession or power such document or thing is believed to be, requiring him to attend and produce it, or to produce it, at the time and place stated in the summons or order.*

(2) *Any person required under this section merely to produce a document or other thing shall be deemed to have complied with the requisition if he causes such document or thing to be produced instead of attending personally to produce the same.*

(3) *Nothing in this section shall be deemed-*

(a) *to affect sections 123 and 124 of the Indian Evidence Act, 1872 (1 of 1872), or the Bankers' Books Evidence Act, 1891 (13 of 1891) or*

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(b) to apply to a letter, postcard, telegram or other document or any parcel or thing in the custody of the postal or telegraph authority.”

18. Recently, Hon'ble Supreme Court in ***Varsha Garg Vs. The State of Madhya Pradesh and others – Criminal Appeal No.1021 of 2022 decided on 08.08.2022***, has discussed the scope of Section 311 and Section 91 Cr.P.C., besides Section 65 of the Evidence Act. It has been held as under: -

“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 purposively, to achieve the intent of the statute to aid in the discovery of truth.

29. *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”. Essentiality of the evidence of the person who is to be examined coupled with the need for the just decision of the case constitute the touchstone which must guide the decision of the Court. The first part of the statutory provision is discretionary while the latter part is obligatory.*

19. After referring to the observations made in ***Mohanlal Shamji Soni vs. Union of India (1991) Supp (1) SCC 271***, Hon'ble Supreme Court further held in ***Varsha Garg (supra)***:

31 *Summing up the position as it obtained from various decisions of this Court, namely **Rameshwar Dayal v. State of U.P. (1979) 2 SCC 518; State of W.B. v. Tulsidas Mundhra (1963) Supp 1 SCR 1; Jamatraj Kewalji Govani v. State of Maharashtra (1967) 3 SCR 415;***

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Masalti v. State of U.P. (1964) 8 SCR 133; Rajeswar Prosad Misra v. State of W.B. (1966) 1 SCR 178; and R.B. Mithani v. State of Maharashtra (1971) 1 SCC 523, the Court held:

*“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.**”*

20. Hon'ble Supreme Court further held in **Varsha Garg (supra)**:

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

33 Section 91 CrPC empowers inter alia any Court to issue summons to a person in whose possession or power a document or thing is believed to be, where it considers the production of the said document or thing necessary or desirable for the purpose of any investigation, inquiry, trial or other proceeding under the CrPC.

34 Section 91 forms part of Chapter VII of CrPC which is titled “Processes to Compel the Production of Things”. Chapter XVI of the CrPC titled “Commencement of Proceedings before Magistrates” includes Section 207 which provides for the supply to the accused of a copy of the police report and other documents in any case where the proceeding has been instituted on a police report. Both operate in distinct spheres.”

21. Hon'ble Supreme Court in **Varsha Garg (supra)** further dealt

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with the objections of the opposite party to the effect that application under Section 311 Cr.P.C should not be allowed, as it would lead to filling up the lacunae of the prosecution case. It was held that even the said reason cannot be absolute bar in allowing the application under Section 311 Cr.P.C. Hon'ble Supreme Court held under: -

39. *In the decision in **Zahira Habibullah Sheikh (5) v. State of Gujarat (2006) 3 SCC 374**, which was more recently reiterated in **Godrej Pacific Tech. Ltd. v. Computer Joint India Ltd. (2008) 11 SCC 108**, 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:*

*“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 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)

40 *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**, while reiterating **Rajendra Prasad v. Narcotic Cell (1999) 6 SCC 110**, the Court observed that it is the duty of the criminal court to allow the prosecution to correct an error in interest of justice. In **Rajendra Prasad (supra)**, the Court had held that:*

“8. Lacuna in the prosecution must be understood as the inherent weakness or a latent wedge in the matrix of the prosecution case. The

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*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 irreparable lacuna. **No party in a trial can be foreclosed from correcting errors. 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.** After all, 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)

22. Further, in **Varsha Garg (supra)**, dealing with the objection regarding the stage, at which the application under Section 311 Cr.P.C can be moved, Hon'ble Supreme Court held that Court is vested with a broad and wholesome power in terms of Section 311 Cr.P.C., to summon and resummon or recall and re-examine any material witness at any stage and that closing of the prosecution evidence is not an absolute bar. In this regard, Hon'ble Supreme Court noted as under: -

*“42..... Further, in **Zahira Habibullah Sheikh (5) (supra)**, the Court reiterated the extent of powers under Section 311 and held that:*

*“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.”

(emphasis supplied)

43 The Court while reiterating the principle enunciated in **Mohanlal Shamji Soni** (*supra*) stressed upon the wide ambit of Section 311 which allows the power to be exercised at any stage and held that:

*“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 a 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 v. Union of India 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 judiciously 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. 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 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)

23. Having noticed the legal position as above, regarding the scope and ambit of Section 311 Cr.P.C., now let us advert to the facts of the present case. The main allegation against the accused is that in conspiracy with each other, they forged the revenue record and the Power of Attorney bearing Wasika No.9824 dated 17.11.1994 in the name of Ram Murti and on the basis of that forged Power of Attorney, land was sold initially in the name of Harbans Singh and then in the name of Raghbir and Kulwinder. In order to prove the said charge, it is essential to prove that signatures on the allegedly fake Power of Attorney dated 17.11.1994 are not that of Ram Murti. If in order to prove the said allegation, prosecution wants to examine a witness, namely, Om Parkash son of Narrata Ram so as to prove the standard signatures of deceased Ram Murti upon a partnership deed, for comparing the same with the allegedly fake Power of Attorney, the said fact is certainly going to help the trial Court in arriving at a just conclusion and which is essential for the just decision of the case.

24. As far as the documents as mentioned in the application under Section 311 read with Section 91 Cr.P.C are concerned, these are part of official record and can certainly be produced by calling the relevant witnesses. In fact, as argued before this Court, the main objection of learned counsel for the petitioners/ accused is qua examination of witness namely Om Parkash as mentioned in the application for proving the standard signatures of Ram Murti on a partnership deed. Having regard to the nature of charge against the accused, which is required to be

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for the petitioners is held to be devoid of any merit. No doubt that various opportunities have already been availed by the prosecution but that in itself cannot be a bar to exercise the powers under Section 311 Cr.P.C for just decision of the case. As such, CRM-M-52219 of 2018 is hereby dismissed. The order dated 20.10.2018 passed by the learned trial Court, allowing the application under Section 311 read with Section 91 Cr.P.C is hereby upheld.

25. Taking up CRM-M-16215 of 2019, no doubt that by way of order dated 02.07.2018 in CRR No.3249 of 2016, this Court had directed the trial Court to conclude the trial within six months but at the same time, it was also directed that trial Court would ensure that proceedings under Section 350 Cr.P.C be followed, if necessary, to secure the presence of government officials including police officials and other witnesses, if they are not appearing before the Court despite summons and warrants issued. As the various orders placed on record by petitioner in CRM-M-16215 of 2019, i.e., complainant reveal that statement of PW1- Rajesh Pal was concluded on 17.08.2018. The case was adjourned to 30.08.2018, on which date, statement of PW3 was recorded. However, only examination-in-chief of PW4 Kuldeep Singh was recorded. His further cross-examination was deferred and he was bound down for next date of hearing. He did not appear on the adjourned date despite issuance of warrants of arrest against him. As it appears that trial Court did not make any attempt to secure the presence of PW4 Kuldeep Singh by coercive means. Later on, statements of PW5 Paramjit Kaur and PW6 Gurcharan Singh were recorded on 26.09.2018. Statement of PW7 Om Parkash was partly recorded on 19.11.2018 and his further examination

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was deferred for want of documents. He was bound down for 27.11.2018. Record does not reveal that presence of PW7 Om Parkash was later on procured through any coercive means, when he did not appear despite bound down. Later on, summons of PWs Balram Kumar, Darshan Singh Patwari, Navdeep Gupta - Handwriting Expert and Inderaj Ahlmad were received unserved as per order dated 21.12.2018. Statements of PWs Navdeep Gupta, PW9 Inderaj and that of PW10 Darshan Singh were recorded later but no efforts appear to have been made to summon PW Balram by way of coercive methods, who had not appeared despite service of summons and then bailable warrants.

26. In the afore-said circumstances, the order dated 11.02.2019 passed by learned Additional Chief Judicial Magistrate, Ludhiana closing the prosecution evidence and the order dated 11.03.2019 passed by learned Additional Sessions Judge, Ludhiana dismissing the revision against the said order, cannot be sustained in the eyes of law. It is also relevant to mention that trial Court itself had moved a letter before this Court through District and Sessions Judge, Ludhiana, for extension of time for conclusion of the trial and without waiting for the directions, passed the impugned order closing the evidence.

27. Resultantly, CRM-M-16215 of 2019 is hereby allowed. Order dated 11.02.2019 passed by learned Additional Chief Judicial Magistrate, Ludhiana closing the prosecution evidence and the order dated 11.03.2019 passed by learned Additional Sessions Judge, Ludhiana dismissing the revision, are hereby set aside.

28. The trial Court is directed to conclude the trial within a period of next nine months from the date of first appearance of both the

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sides after receiving the certified copy of this order. CRM No.45666 of
2018 (containing letter No.340 dated 11.12.2018) of learned Additional
Chief Judicial Magistrate, Ludhiana is also allowed accordingly.

Photocopy of this order be placed on the connected case
files.

November 02, 2023
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(DEEPAK GUPTA)
JUDGE

Whether reasoned/speaking: Yes/No
Whether reportable: Yes/No